

63A-1-101. Short title.

This title is known as the "Utah Administrative Services Code."

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-102. Purposes.

The department shall:

- (1) provide specialized agency support services commonly needed;
- (2) provide effective, coordinated management of state administrative services;
- (3) serve the public interest by providing services in a cost-effective and efficient manner, eliminating unnecessary duplication;
- (4) enable administrators to respond effectively to technological improvements;
- (5) emphasize the service role of state administrative service agencies in meeting the service needs of user agencies;
- (6) use flexibility in meeting the service needs of state agencies; and
- (7) protect the public interest by insuring the integrity of the fiscal accounting procedures and policies that govern the operation of agencies and institutions to assure that funds are expended properly and lawfully.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-103. Definitions.

As used in this title:

- (1) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of the state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, the Legislature, the courts, or the governor, but does not mean a political subdivision of the state, or any administrative unit of a political subdivision of the state.
- (2) "Department" means the Department of Administrative Services.
- (3) "Executive director" means the executive director of the Department of Administrative Services.

Amended by Chapter 292, 2014 General Session

63A-1-104. Creation of department.

There is created within state government the Department of Administrative Services, to be administered by an executive director.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-105. Appointment of executive director -- Compensation.

- (1) The governor shall:
 - (a) appoint the executive director with the consent of the Senate; and
 - (b) establish the executive director's salary within the salary range fixed by the

Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) The executive director shall serve at the pleasure of the governor.

Amended by Chapter 176, 2002 General Session

63A-1-105.5. Rulemaking authority of executive director.

The executive director shall, upon the recommendation of the appropriate division directors, make rules consistent with state and federal law, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing:

- (1) administrative services; and
- (2) the provision and use of administrative services furnished to state agencies and institutions.

Amended by Chapter 382, 2008 General Session

63A-1-106. Federal assistance -- Acceptance -- Approval of applications -- Expenditures necessary for eligibility.

(1) The executive director with the approval of the governor may accept on behalf of the state, and bind the state by that acceptance, any fund or service, advanced, offered, or contributed in whole or in part by the federal government for purposes consistent with the powers and duties of the department.

(2) All applications for federal grants or other federal assistance in support of any program of the department are subject to the approval of the executive director.

(3) If any executive or legislative provisions of the federal government require the expenditure of state funds as a condition to participation by the state in any fund, property, or service, the executive director, with the governor's approval, shall expend whatever funds are necessary out of the money provided by the Legislature for use and disbursement by the department.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-107. Administrative support to building board and building ownership authority.

The executive director shall provide administrative support and staff services to the State Building Board and the State Building Ownership Authority.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-108. Powers and duties of other agencies assigned to executive director.

Powers and duties assigned by other provisions of this title to the Division of Finance, the State Building Board, or other agencies or divisions of the department, and not specifically assigned by this chapter, shall be assigned to the executive director with the approval of the governor.

Amended by Chapter 169, 2005 General Session

63A-1-109. Divisions of department -- Administration.

- (1) The department shall be composed of the following divisions:
 - (a) administrative rules;
 - (b) archives and records;
 - (c) facilities construction and management;
 - (d) finance;
 - (e) fleet operations;
 - (f) state purchasing and general services; and
 - (g) risk management.
- (2) Each division shall be administered and managed by a division director.

Amended by Chapter 79, 2011 General Session

Amended by Chapter 265, 2011 General Session

63A-1-109.5. Department authority to operate a division as an internal service fund agency.

Subject to Section 63A-1-114 and provisions governing internal service funds or internal service fund agencies under Title 63J, Chapter 1, Budgetary Procedures Act, the department may operate a division described in Section 63A-1-109 as an internal service fund agency.

Amended by Chapter 79, 2011 General Session

63A-1-111. Service plans established by each division -- Contents -- Distribution.

- (1) Each division of the department shall formulate and establish service plans for each fiscal year.
- (2) The service plans shall describe:
 - (a) the services to be rendered to state agencies;
 - (b) the methods of providing those services;
 - (c) the standards of performance; and
 - (d) the performance measures used to gauge compliance with those standards.
- (3) Before the beginning of each fiscal year, the service plans shall be distributed to each state agency and institution that uses the services provided by that division.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-1-112. Certificates of participation -- Legislative approval required -- Definition -- Exception.

- (1) (a) Certificates of participation for either capital facilities or capital improvements may not be issued by the department, its subdivisions, or any other state agency after July 1, 1985, without prior legislative approval.

(b) Nothing in this section affects the rights and obligations surrounding certificates of participation that were issued prior to July 1, 1985.

(2) (a) As used in this section, "certificate of participation" means an instrument that acts as evidence of the certificate holder's undivided interest in property being lease-purchased, the payment on which is subject to appropriation by the Legislature.

(b) (i) For purposes of this Subsection (2)(b), "energy savings agreement" has the meaning as defined in Section 63A-5-701.

(ii) "Certificate of participation" does not include an energy savings agreement.

Amended by Chapter 382, 2008 General Session

63A-1-113. Agency exempt from title.

The Utah Housing Corporation is exempt from this title.

Amended by Chapter 71, 2005 General Session

63A-1-114. Rate Committee -- Membership -- Duties.

(1) (a) There is created a Rate Committee which shall consist of:

(i) the executive director of the Governor's Office of Management and Budget, or a designee;

(ii) the executive directors of three state agencies that use services and pay rates to one of the department internal service funds, or their designee, appointed by the governor for a two-year term;

(iii) the executive director of the Department of Administrative Services, or a designee;

(iv) the director of the Division of Finance, or a designee; and

(v) the chief information officer.

(b) (i) The committee shall elect a chair from its members, except that the chair may not be from an agency that receives payment of a rate set by the committee.

(ii) Members of the committee who are state government employees and who do not receive salary, per diem, or expenses from their agency for their service on the committee shall receive no compensation, benefits, per diem, or expenses for the members' service on the committee.

(c) The Department of Administrative Services shall provide staff services to the committee.

(2) (a) A division described in Section 63A-1-109 that manages an internal service fund shall submit to the committee a proposed rate and fee schedule for services rendered by the division to an executive branch entity or an entity that subscribes to services rendered by the division.

(b) The committee shall:

(i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings Act;

(ii) review the proposed rate and fee schedules and may approve, increase, or decrease the rate and fee;

(iii) recommend a proposed rate and fee schedule for each internal service fund

to:

(A) the Governor's Office of Management and Budget; and
(B) the legislative appropriations subcommittees that, in accordance with Section 63J-1-410, approve the internal service fund agency's rates, fees, and budget; and

(iv) review and approve, increase or decrease an interim rate, fee, or amount when an internal service fund agency begins a new service or introduces a new product between annual general sessions of the Legislature.

(c) The committee may in accordance with Subsection 63J-1-410(4), decrease a rate, fee, or amount that has been approved by the Legislature.

Amended by Chapter 310, 2013 General Session

63A-1-116. Appointment of coordinator of resource stewardship -- Duties of the coordinator of resource stewardship.

(1) The executive director of the department shall appoint a state coordinator of resource stewardship and establish the coordinator of resource stewardship's salary.

(2) The coordinator of resource stewardship shall report to the executive director or the executive director's designee.

(3) The coordinator of resource stewardship shall:

(a) work with agencies to implement best practices and stewardship measures to improve air quality; and

(b) make an annual report on best practices and stewardship efforts to improve air quality to the Business and Labor Interim Committee and Natural Resources, Agriculture, and Environment Interim Committee.

(4) Each agency will retain absolute discretion whether or not to incorporate any of the practices or measures suggested by the coordinator.

Enacted by Chapter 292, 2014 General Session

63A-2-101. Creation.

There is created the Division of Purchasing and General Services within the Department of Administrative Services.

Amended by Chapter 252, 1997 General Session

63A-2-101.5. Definitions.

As used in this chapter:

(1) "Division" means the Division of Purchasing and General Services created under Section 63A-2-101.

(2) "Federal surplus property" means surplus property of the federal government of the United States.

(3) "Information technology equipment" means equipment that is designed to electronically manipulate, store, or transfer a form of data.

(4) "Inventory property" means property in the possession of the division that is

available for purchase by an agency or the public.

(5) "Judicial district" means a geographic district established by Section 78A-1-102.

(6) "Person with a disability" means a person with a severe, chronic disability that:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is likely to continue indefinitely.

(7) "Personal handheld electronic device":

(a) means an electronic device that is designed for handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and

(b) includes a mobile phone, pocket personal computer, personal digital assistant, or similar device.

(8) "Property act" means the Federal Property and Administrative Services Act of 1949, 40 U.S.C. Sec. 549.

(9) "State surplus property" means surplus property that is not:

(a) a vehicle; or

(b) federal surplus property.

(10) "State surplus property contractor" means the person described in Section 63A-2-410 that the state contracts with to administer the state's program for the disposition of state surplus property.

(11) (a) "Surplus property" means property that an agency:

(i) intends to divest itself of; and

(ii) has acquired by purchase, seizure, or donation.

(b) "Surplus property" does not include:

(i) real property;

(ii) assets of the School and Institutional Trust Lands Administration; or

(iii) an aluminum can or an item made primarily of paper, plastic, or cardboard

that is:

(A) discarded; and

(B) recyclable.

Amended by Chapter 151, 2013 General Session

63A-2-102. Director of division -- Appointment.

(1) The executive director of the department shall appoint the director of the Division of Purchasing and General Services with the approval of the governor.

(2) The director of the Division of Purchasing and General Services is also the state's chief procurement officer.

Amended by Chapter 252, 1997 General Session

63A-2-103. General services provided -- Subscription by state departments, state agencies, and certain local governmental entities -- Fee

schedule.

- (1) The director of the division:
 - (a) shall operate, manage, and maintain:
 - (i) a central mailing service; and
 - (ii) an electronic central store system for procuring goods and services;
 - (b) shall, except when a state surplus property contractor administers the state's program for disposition of state surplus property, operate, manage, and maintain the state surplus property program;
 - (c) shall, when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program in accordance with Part 4, Surplus Property Services; and
 - (d) may establish microfilming, duplicating, printing, addressograph, and other central services.
- (2) (a) Each state department and agency shall subscribe to all of the services described in Subsections (1)(a)(i) and (ii), unless the director delegates the director's authority to a department or agency under Section 63A-2-104.
 - (b) An institution of higher education, school district, or political subdivision of the state may subscribe to one or more of the services described in Subsections (1)(a)(i) and (ii).
- (3) The director shall:
 - (a) except as provided in Part 4, Surplus Property Services, prescribe a schedule of fees to be charged for all services provided by the division to any department or agency after the director:
 - (i) submits the proposed rate, fees, or other amounts for services provided by the division's internal service fund to the Rate Committee established in Section 63A-1-114; and
 - (ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and 63J-1-504;
 - (b) when practicable, ensure that the fees are approximately equal to the cost of providing the services; and
 - (c) periodically conduct a market analysis of fees, which analysis shall include comparison of the division's rates with the fees of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 151, 2013 General Session

63A-2-104. Delegation of general services to departments or agencies -- Writing required -- Contents -- Termination.

- (1) The director of the Division of Purchasing and General Services, with the approval of the executive director, may delegate, in writing, his authority to perform or control any general services function to other state agencies and institutions by contract or other means authorized by law, if:
 - (a) in the judgment of the executive director, the state department or agency has requested the authority; and

(b) the state department or agency has the necessary resources and skills to perform or control the functions.

(2) The director may delegate his authority only when the delegation would result in net cost savings or improved service delivery to the state as a whole.

(3) The written delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated;

(c) a provision for periodic administrative audits by the department; and

(d) a date on which the agreement shall terminate if not previously terminated or renewed.

(4) An agreement to delegate functions to a state agency or institution may be terminated by the department if the results of administrative audits conducted by the department reveal lack of compliance with the terms of the agreement.

Amended by Chapter 252, 1997 General Session

63A-2-105. Director to approve certain purchases.

(1) Each agency that intends to purchase any mail-related equipment or copy machine shall submit a purchase request to the director of the Division of General Services.

(2) The director shall review those requests to ensure that:

(a) the authority to perform those functions has been appropriately delegated to the agency under this part;

(b) the equipment meets proper specifications; and

(c) the benefits from the agency's purchase of the equipment outweigh the benefits of having the same functions performed by the Division of Purchasing and General Services.

Amended by Chapter 252, 1997 General Session

63A-2-401. Utah surplus property program -- Definitions -- Administration.

(1) As used in this part, "agency" means:

(a) the Utah Departments of Administrative Services, Agriculture and Food, Alcoholic Beverage Control, Commerce, Heritage and Arts, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, Technology Services, and Transportation and the Labor Commission;

(b) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah Office for Victims of Crime, Rehabilitation, and Treasurer;

(c) the Public Service Commission and State Tax Commission;

(d) the State Boards of Education, Pardons and Parole, and Regents;

(e) the Career Service Review Office;

(f) other state agencies designated by the governor;

(g) the legislative branch, the judicial branch, and the State Board of Regents;

and

(h) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-2-402.

(2) (a) The division shall make rules establishing a surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The rules shall include:

(i) procedures and requirements for transferring surplus property directly from one agency to another agency;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) except as provided in Subsection (2)(d), procedures for collecting bad debts;

(vi) requirements and procedures for the disposition of firearms;

(vii) except as provided in Subsection (2)(d), the elements of the rates or other charges assessed by the division for services and handling;

(viii) except as provided in Subsection (2)(d), procedures governing the timing and location of public sales of surplus property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) Except as it relates to a vehicle or federal surplus property, the rules described in Subsection (2)(b)(i) may not require approval by the division, the director of the division, or any other person, for an agency to transfer surplus property directly to another agency.

(d) When a state surplus property contractor administers the state's program for disposition of state surplus property:

(i) rules made under the rulemaking authority described in Subsections (2)(b)(v) and (vii) apply only to surplus vehicles; and

(ii) rules made under the rulemaking authority described in Subsection (2)(b)(viii) apply only to surplus vehicles and federal surplus property.

(3) In creating and administering the program, as it relates to surplus vehicles and federal surplus property only, the division shall, when conditions, inventory, and demand permit:

(a) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(b) hold public sales of property at geographically dispersed locations throughout the state;

(c) except as provided in Subsection (3)(d):

(i) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(ii) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less a fee approved in accordance with Sections 63A-1-114 and

63J-1-410, to pay the costs of administering the surplus property program.

(d) When a state surplus property contractor administers the state's program for disposition of state surplus property, the provisions on Subsection (3)(c) only apply to surplus vehicles.

(4) Except as otherwise expressly provided in this part, or by explicit reference to this part, each state agency shall divest and acquire surplus property only by participating in the division's program.

Amended by Chapter 49, 2013 General Session

Amended by Chapter 151, 2013 General Session

63A-2-402. State surplus property program -- Participation by institutions of higher education.

The Board of Regents shall:

(1) implement a policy requiring each institution of higher education to submit to the division a listing of surplus property available for sale outside the institution, at least 15 days prior to the intended sale date;

(2) supervise and assist compliance by the institutions of higher education with the requirement of this part; and

(3) encourage institutions of higher education to acquire federal surplus property from the division to reduce expenditures.

Renumbered and Amended by Chapter 207, 2011 General Session

63A-2-404. Acquisition of federal surplus property -- Powers and duties -- Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of information -- Reports.

(1) The division may:

(a) acquire from the United States under and in conformance with the property act any federal surplus property under the control of any department or agency of the United States that is usable and necessary for any purposes authorized by federal law;

(b) warehouse federal surplus property if it is not real property; and

(c) distribute federal surplus property within this state to:

(i) tax-supported medical institutions, hospitals, clinics, and health centers;

(ii) school systems, schools, colleges, and universities;

(iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954;

(iv) civil defense organizations;

(v) political subdivisions; and

(vi) any other types of institutions or activities that are eligible to acquire the federal surplus property under federal law.

(2) The division may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;

- (b) investigate the applications;
 - (c) obtain opinions about those applications from the appropriate health or educational authorities of this state;
 - (d) make recommendations about the need of the applicant for the property, the merits of the applicant's proposed use of the property, and the suitability of the property for those purposes; and
 - (e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.
- (3) The division may appoint advisory boards or committees.
- (4) If required by law or regulation of the United States in connection with the disposition of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the division from the United States, the division may:
- (a) make certifications, take action, and make expenditures;
 - (b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;
 - (c) require reports; and
 - (d) make investigations.
- (5) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:
- (a) locate both real and personal property available for acquisition from the United States;
 - (b) ascertain the terms and conditions under which that property may be obtained;
 - (c) receive requests from those institutions, organizations, and agencies and transmit to them all available information in reference to that property; and
 - (d) aid and assist those institutions, organizations, and agencies in every way possible in those acquisitions or transactions.
- (6) The division shall:
- (a) cooperate with the departments or agencies of the United States;
 - (b) file a state plan of operation;
 - (c) operate according to that plan;
 - (d) take the actions necessary to meet the minimum standards prescribed by the property act;
 - (e) make any reports required by the United States or any of its departments or agencies; and
 - (f) comply with the laws of the United States and the regulations of any of the departments or agencies of the United States governing the allocation of, transfer of, use of, or accounting for any property donated to the state.

Amended by Chapter 151, 2013 General Session

63A-2-405. Charges and fees assessed for surplus property.

(1) If approved in accordance with Sections 63A-1-114 and 63J-1-410, the division:

(a) may assess charges and fees for the acquisition, warehousing, distribution, or transfer of federal surplus property for educational, public health, or civil defense purposes, including research, only if those charges and fees are reasonably related to the division's care and handling costs of acquiring, receipting, warehousing, distributing, or transferring the federal surplus property; and

(b) may reduce or eliminate charges on federal surplus property that is found not to be usable for the purpose for which it was procured.

(2) When there is a state surplus property contractor:

(a) the division may not assess charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property; and

(b) unless expressly provided otherwise in the contract between the division and the state surplus contractor, the state surplus contractor may not assess charges or fees to an agency for the acquisition, warehousing, distribution, sale, transfer, or handling of state surplus property.

Amended by Chapter 151, 2013 General Session

63A-2-406. Rulemaking on giving priority to state and local agencies in purchasing surplus property -- Rulemaking on the sale or use of a personal handheld electronic device.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(1) giving state and local agencies priority to purchase surplus property for a 30-day period except for personal handheld electronic devices under Subsection (2); and

(2) allowing the sale of a personal handheld electronic device to a user who:

(a) is provided the device as part of the user's employment; and

(b) subsequently makes a change in employment status including, departure, retirement, or transfer to another agency within state government.

Renumbered and Amended by Chapter 207, 2011 General Session

63A-2-407. Transfer of information technology equipment for persons with a disability.

(1) The division may transfer information technology equipment, or authorize the transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use by a person with a disability.

(2) Interagency transfers and sales of surplus property to state and local agencies within the 30-day period under Section 63A-2-406 shall have priority over transfers under Subsection (1).

(3) The division shall annually report to the Division of Services for People With Disabilities the:

- (a) names of the nonprofit entities receiving transfers under Subsection (1); and
- (b) types and amounts of equipment received.

Renumbered and Amended by Chapter 207, 2011 General Session

63A-2-408. Authority of state or local subdivision to receive property -- Revocation of authority of officer.

(1) Notwithstanding any other provision of law, the governing board or the executive director of any state department, instrumentality, or agency or the legislative body of any city, county, school district, or other political subdivision may by order or resolution give any officer or employee the authority to:

- (a) as it relates to federal surplus property:
 - (i) secure the transfer to it of federal surplus property through the division under the property act; and
 - (ii) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers; and
- (b) as it relates to surplus property other than federal surplus property:
 - (i) secure the direct transfer of surplus property to it; and
 - (ii) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers.

(2) The authority conferred upon any officer or employee by an order or resolution remains in effect until:

- (a) the order or resolution is revoked; and
- (b) the division has received written notice of the revocation.

Amended by Chapter 151, 2013 General Session

63A-2-409. Disposal of certain surplus property.

This part does not apply to disposition by:

- (1) the legislative branch of surplus property that is information technology equipment or a personal handheld electronic device, if the Legislative Management Committee, by rule, establishes its own policy for disposition, by the legislative branch, of surplus property that is information technology equipment or a personal handheld electronic device; or
- (2) the Department of Transportation of surplus personal property that was acquired as part of a transaction or legal action by the Department of Transportation acquiring real property for a state transportation purpose.

Amended by Chapter 15, 2013 General Session

Amended by Chapter 151, 2013 General Session

63A-2-410. State surplus property contractor -- Deposit of proceeds.

(1) (a) The division shall, after issuing a request for proposals, award a contract to a person in the private sector to administer the state's program for disposition of state surplus property.

- (b) The request for proposals shall seek:
 - (i) proposals that provide that the sole source of payment to the contractor will be a percentage of the amount for which the contractor sells state surplus property; and
 - (ii) proposals that provide for alternative methods of payment.
- (2) The contract shall:
 - (a) provide that the contractor may sell state surplus property by auction, bid, or other manner designed to get the best price available for the state surplus property;
 - (b) prohibit the contractor from engaging in the sale of state surplus property in a manner that would constitute a conflict of interest;
 - (c) require regular and detailed accounting to the division of:
 - (i) the receipt and sale of state surplus property; and
 - (ii) the receipt and payment of funds by the contractor; and
 - (d) ensure public transparency regarding the sale of state surplus property by requiring that the contractor:
 - (i) post online information related to a sale or attempted sale of state surplus property, including:
 - (A) a description of the state surplus property;
 - (B) the agency that requested sale of the surplus property;
 - (C) the price at which the surplus property was sold; and
 - (D) the date that the surplus property was sold; and
 - (ii) post the information described in Subsection (2)(c)(i):
 - (A) within a time frame described in the contract; and
 - (B) for a period of time described in the contract.
- (3) The contractor may not:
 - (a) unless expressly provided otherwise in the contract between the division and the contractor:
 - (i) be required to store state surplus property; or
 - (ii) charge for the storage of state surplus property;
 - (b) administer the direct transfer of state surplus property from one agency to another agency;
 - (c) administer the disposal or destruction, by an agency, of state surplus property as waste;
 - (d) administer the donation by an agency of state surplus property to a charity;or
 - (e) administer the disposition of state surplus property under Section 63A-2-406, 63A-2-407, 63A-2-408, or 63A-2-409.
- (4) The division shall, after paying the amount owed to the state surplus property contractor, transfer the remaining money received for the sale of a particular item of state surplus property to the agency that requested the sale of the particular item of state surplus property, in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
- (5) The division shall:
 - (a) on or before August 31, 2013, give an oral report to the Government Operations Interim Committee regarding:
 - (i) the division's progress and plans in relation to issuing the request for

proposals described in this section; and

(ii) rules passed or proposed, on or after May 14, 2013, in relation to the state surplus property program; and

(b) (i) issue the request for proposals described in this section on or before September 30, 2013; or

(ii) in November 2013, give an oral report to the Government Operations Interim Committee, explaining why the request for proposals was not issued on or before September 30, 2013.

Enacted by Chapter 151, 2013 General Session

63A-2-411. Donation of state surplus property -- Disposal or destruction of state surplus property as waste.

The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that permit an agency to destroy, dispose of as waste, or donate to a charitable organization state surplus property, if:

- (1) the state surplus property is worth less than \$30;
- (2) the state surplus property fails to sell at auction;
- (3) the cost of selling the state surplus property is greater than or equal to the value of the state surplus property;
- (4) the state surplus property is no longer usable;
- (5) the state surplus property is damaged and cannot be repaired;
- (6) the state surplus property is damaged and the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or
- (7) the state surplus property can be replaced for less than the cost of repairing the state surplus property.

Enacted by Chapter 151, 2013 General Session

63A-3-101. Creation.

There is created within the department the Division of Finance, to be administered by a director.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-102. Director of division -- Appointment.

(1) The executive director shall appoint the director of the Division of Finance with the approval of the governor.

(2) The director of the Division of Finance shall serve at the pleasure of the executive director.

(3) The director of the Division of Finance is the state's chief fiscal officer and the state's accounting officer.

Enacted by Chapter 212, 1993 General Session

63A-3-103. Duties of director of division -- Application to institutions of higher education.

- (1) The director of the Division of Finance shall:
 - (a) define fiscal procedures relating to approval and allocation of funds;
 - (b) provide for the accounting control of funds;
 - (c) approve proposed expenditures for the purchase of supplies and services;
 - (d) promulgate rules that:
 - (i) establish procedures for maintaining detailed records of all types of leases;
 - (ii) account for all types of leases in accordance with generally accepted accounting principles;
 - (iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and
 - (iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance;
 - (e) if the department operates the Division of Finance as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
 - (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - (ii) other information or analysis requested by the Rate Committee;
 - (f) oversee the Office of State Debt Collection; and
 - (g) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.
- (2) (a) Institutions of higher education are subject to the provisions of Title 63A, Chapter 3, Part 1, General Provisions, and Part 2, Accounting System, only to the extent expressly authorized or required by the State Board of Regents under Title 53B, State System of Higher Education.
 - (b) Institutions of higher education shall submit financial data for the past fiscal year conforming to generally accepted accounting principles to the director of the Division of Finance.
- (3) The Division of Finance shall prepare financial statements and other reports in accordance with legal requirements and generally accepted accounting principles for the state auditor's examination and certification:
 - (a) not later than 60 days after a request from the state auditor; and
 - (b) at the end of each fiscal year.

Amended by Chapter 79, 2011 General Session

63A-3-104. Appropriation for contingency purposes -- Procedure for allotment -- Legislative intent.

- (1) (a) The Legislature shall determine the amount to be appropriated for contingency purposes, as well as the limits on the amount of any one allotment or total allotments to any one department or agency.
 - (b) In advance of making any such allotment, the governor shall notify the Legislature through the Office of the Legislative Fiscal Analyst, of his or her intent to do

so, of the amount to be allotted, and the justification for the allotment.

(2) It is the intent of the Legislature that such transfers be made only for unforeseeable emergencies, and allotments shall not be made to correct poor budgetary practices or for purposes having no existing appropriation or authorization.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-105. Securities deposited with state treasurer -- Release.

(1) The director of the Division of Finance shall collect and deposit with the state treasurer all stocks, evidences of indebtedness, bonds, and securities of every kind and nature belonging to the state or any of its departments.

(2) The state treasurer shall keep a complete record of the items deposited under Subsection (1) and credit each to the proper fund or account. The treasurer shall release the items only upon the order of the director.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-106. Per diem rates for board members.

(1) As used in this section and Section 63A-3-107:

(a) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(b) "Board member" means a person appointed or designated by statute to serve on a board.

(c) "Executive branch" means a department, division, agency, board, or office within the executive branch of state government.

(d) "Governmental entity" has the same meaning as provided under Section 63G-2-103.

(e) "Higher education" means a state institution of higher education, as defined under Section 53B-1-102.

(f) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.

(g) "Official meeting" means a meeting of a board that is called in accordance with statute.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules establishing per diem rates to defray subsistence costs for a board member's attendance at an official meeting.

(3) Unless otherwise provided by statute, a per diem rate established under Subsection (2) is applicable to a board member who serves:

(a) within the executive branch, except as provided under Subsection (3)(b);

(b) within higher education, unless higher education pays the costs of the per diem;

(c) on a board that is:

(i) not included under Subsection (3)(a) or (b); and

(ii) created by a statute that adopts the per diem rates by reference to:

- (A) this section; and
- (B) the rule authorized by this section; and
- (d) within a government entity that is not included under Subsection (3)(a), if the government entity adopts the per diem rates by reference to:
 - (i) this section; or
 - (ii) the rule establishing the per diem rates.
- (4) (a) Unless otherwise provided by statute, a board member who is not a legislator may receive per diem under this section and travel expenses under Section 63A-3-107 if the per diem and travel expenses are incurred by the board member for attendance at an official meeting.
- (b) Notwithstanding Subsection (4)(a), a board member may not receive per diem or travel expenses under this Subsection (4) if the board member is being paid by a governmental entity while performing the board member's service on the board.
- (5) A board member may decline to receive per diem for the board member's service.
- (6) Compensation and expenses of a board member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

63A-3-107. Travel expenses of board members and state officers and employees.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules governing in-state and out-of-state travel expenses.
- (2) Unless otherwise provided by statute, a travel expense rule established under Subsection (1) is applicable to:
 - (a) a board member, an officer, or employee of the executive branch, except as provided under Subsection (2)(b);
 - (b) a board member, an officer, or employee of higher education, unless higher education pays the costs of the travel expenses;
 - (c) a board member who:
 - (i) is not included under Subsection (2)(a) or (b); and
 - (ii) serves on a board created by a statute that adopts the travel expense rates by reference to:
 - (A) this section; and
 - (B) the rule authorized by this section; and
 - (d) a government entity that is not included under Subsection (2)(a), if the government entity adopts the travel expense provisions by reference to:
 - (i) this section; or
 - (ii) the rule establishing the travel expense provisions.
 - (3) The Division of Finance shall make the travel expense rules on the basis of:
 - (a) a mileage allowance; and
 - (b) reimbursement for other travel expenses incurred.

(4) The travel expense rules may specify an exception to a travel expense rule or allow the director of the Division of Finance to make an exception to a travel expense rule, when justified by the executive director of the executive branch agency or department, to meet special circumstances encountered in official attendance at a conference, convention, meeting, or other official business, as determined by the director of the Division of Finance.

(5) An officer or employee of the executive branch may not incur obligations for travel outside the state without the advance approval of the executive director or a designee of the executive director of an executive branch department or agency.

(6) A board member may decline to receive travel expenses for the board member's service.

(7) Compensation and expenses of a board member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

63A-3-201. Appointment of accounting and other officers and employees by director of the Division of Finance -- Delegation of powers and duties by director.

(1) With the approval of the executive director, the director of the Division of Finance shall appoint an accounting officer and other administrative officers that are necessary to efficiently and economically perform the functions of the Division of Finance.

(2) The director of the Division of Finance may:

(a) organize the division and employ other assistants to discharge the functions of the division;

(b) delegate to assistants, officers, and employees any of the powers and duties of the office subject to his or her control and subject to any conditions he may prescribe; and

(c) delegate the powers and duties of the office only by written order filed with the lieutenant governor.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-202. Comprehensive state accounting system -- Approval of agency accounting systems -- Cost accounting systems required.

(1) The director of the Division of Finance shall establish a comprehensive state accounting system.

(2) Officers, departments, agencies, and institutions of Utah may create and maintain accounting systems only with the approval of the director.

(3) The director may, with the approval of the executive director, require any department or institution to install and maintain a cost accounting system that will disclose the unit cost of material or service produced or performed by a department.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-203. Accounting control over state departments and agencies -- Prescription and approval of financial forms, accounting systems, and fees.

- (1) The director of the Division of Finance shall:
 - (a) exercise accounting control over all state departments and agencies except institutions of higher education; and
 - (b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.
- (2) The director shall audit all claims against the state for which an appropriation has been made.
- (3) (a) The director shall:
 - (i) prescribe all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies;
 - (ii) prescribe the forms, procedures, and records to be maintained by all departmental, institutional, or agency store rooms;
 - (iii) exercise inventory control over the store rooms; and
 - (iv) prescribe all forms to be used by the division.
- (b) Before approving the forms in Subsection (3)(a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.
- (4) Before implementation by any state department or agency, the director of the Division of Finance shall review and approve:
 - (a) any accounting system developed by a state department or agency; and
 - (b) any fees established by any state department or agency to recover the costs of operations.

Amended by Chapter 324, 2010 General Session

63A-3-204. Financial control system -- Financial reports as to state funds -- Information required of executive directors of state departments.

- (1) The director of the Division of Finance shall:
 - (a) maintain a financial control system according to generally accepted accounting principles;
 - (b) record the constituent elements of the General Fund and of each special fund in proper relationship to each other; and
 - (c) keep all accounts in balance.
- (2) The director of the Division of Finance shall prepare and submit to the governor and to the Legislature, when requested, reports showing:
 - (a) the condition of the General Fund and each special fund of the state;
 - (b) the available cash resources of the General Fund and each special fund of the state;
 - (c) as to each fund:
 - (i) the estimated revenue and anticipated time of collection;
 - (ii) the current encumbrances, future obligations, and estimated date they

accrue;

- (iii) appropriations;
- (iv) obligations;
- (v) monthly allotments;
- (vi) unencumbered allotments; and
- (vii) reserves and surpluses;
- (d) the capital assets and liability accounts of the state; and
- (e) the valuation account of all other state property.

(3) The executive director of each department of state government and all institutions of higher education shall submit statements containing the information and data necessary to enable the director of the Division of Finance to submit to the governor the reports required by Subsection (2).

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.

- (1) As used in this section, "revolving loan fund" means:
 - (a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;
 - (b) the Water Resources Construction Fund, created in Section 73-10-8;
 - (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;
 - (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;
 - (e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;
 - (f) the Agriculture Resource Development Fund, created in Section 4-18-106;
 - (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;
 - (h) the Permanent Community Impact Fund, created in Section 35A-8-603;
 - (i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409;
 - (j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;
 - (k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and
 - (l) the Energy Efficiency Fund, created in Section 11-45-201.
- (2) The division shall for each revolving loan fund:
 - (a) make rules establishing standards and procedures governing:
 - (i) payment schedules and due dates;
 - (ii) interest rate effective dates;
 - (iii) loan documentation requirements; and
 - (iv) interest rate calculation requirements; and
 - (b) make an annual report to the Legislature containing:
 - (i) the total dollars loaned by that fund during the last fiscal year;
 - (ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;
 - (iii) a description of each project that received money from that revolving loan fund;

- (iv) the amount of each loan made to that project;
- (v) the specific purpose for which the proceeds of the loan were to be used, if any;
- (vi) any restrictions on the use of the loan proceeds;
- (vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and
- (viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Amended by Chapter 227, 2014 General Session

63A-3-301. Definitions.

As used in this part, "account receivable" means any amount due the state or any other governmental entity as a result of a court or administrative order, or for which materials or services have been provided but for which payment has not been received by the servicing unit.

Amended by Chapter 79, 2011 General Session

63A-3-302. Unpaid account receivable due the state.

If any account receivable has been unpaid for more than 90 days, any agency, department, division, commission, committee, board, council, institution, or any other authority of state government responsible for collection of the account may proceed under this part to collect the delinquent amount.

Enacted by Chapter 212, 1993 General Session

63A-3-303. Notice to debtor -- Contents.

(1) Upon default in payment of any account receivable that is not due pursuant to final court or administrative order or judgment, the entity responsible for collecting the account shall send a notice by mail to the debtor at the debtor's last-known address.

- (2) The notice shall state:
 - (a) the date and amount of the receivable;
 - (b) a demand for immediate payment of the amount;
 - (c) a statement of the right of the debtor to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner;
 - (d) the time within which a written response must be filed; and
 - (e) a statement notifying the debtor that the state may obtain an order under this part and execute upon income tax overpayments or refunds of the debtor if:
 - (i) the debtor fails to respond to the notice; or

- (ii) a hearing is held and the hearing officer decides against the debtor.

Amended by Chapter 79, 2011 General Session

63A-3-304. Effect of nonpayment or failure to respond.

If a written response or payment of delinquent receivable is not received by the state within 15 days from the date of receipt of the notice by the debtor, the debtor is in default and the state may determine the balance due and collect the balance as provided in Section 63A-3-307.

Amended by Chapter 79, 2011 General Session

63A-3-305. Hearing requested -- Notice to debtor.

If a written response is received by the state and a hearing is requested, the state shall:

- (1) set a hearing date within 30 days of the receipt of the response; and
- (2) mail written notice of the hearing to the debtor at least 15 days before the date of the hearing.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-306. Hearing examiner -- Procedures -- Adjudicative proceedings.

- (1) (a) The hearing shall be held before a hearing examiner designated by the state.
- (b) The hearing examiner may not be an officer or employee of the entity in state government responsible for collecting or administering the account.
- (2) The state shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

63A-3-307. Abstract of order and nonpayment or failure to respond -- Liens.

- (1) The following shall constitute a lien in the amount of the receivable plus interest and collection costs allowed by law against any state income tax refund or overpayment due or to become due the debtor:
 - (a) an abstract of an administrative order; or
 - (b) nonpayment or failure to respond as provided under Section 63A-3-304.
- (2) The lien created by this section shall, for the purposes of Section 59-10-529 only, be considered a judgment, but no credit of a tax refund or overpayment may be made on account of this lien until 20 days after the date of the administrative order.
- (3) The lien created by this section shall remain effective for eight years.

Amended by Chapter 79, 2011 General Session

63A-3-308. Judicial review -- Effect on lien.

(1) A judicial review of a lien created under Section 63A-3-307 may be obtained by any party within one year of the creation of the lien by filing a complaint with the district court.

(2) (a) A notice of the filing of a complaint may be filed with the State Tax Commission.

(b) If notice is filed, the tax commission may take no action with respect to the lien created by Section 63A-3-307 until the matter is finally disposed of by the courts, except as provided in this part.

Amended by Chapter 79, 2011 General Session

63A-3-309. Bond required -- Terms -- Expenses of debtor.

(1) (a) If a complaint is filed by the debtor for judicial review of an order entered under this part, the debtor shall furnish a bond to the State Tax Commission, with good and sufficient sureties, in the amount of the delinquent receivable or the amount of any overpayment or refund due, whichever is less, unless waived by the court.

(b) The lien created by Section 63A-3-307 is then dissolved as to that overpayment or refund and the overpayment or refund shall be released to the debtor.

(2) The bond shall provide that the surety will pay, upon a final determination adverse to the debtor, the amount of the bond or any other lesser amount as the court may determine, to the State Tax Commission for the use and benefit of the entity of state government obtaining the order.

(3) If the judicial review finds the claim of the state invalid, the state shall reimburse the debtor all reasonable expenses and attorney's fees incurred.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-310. Rules for implementing part.

The Board of Examiners may adopt rules for the implementation of this part, including rules for the conduct of hearings and appointment of hearing examiners.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-3-401. Definitions.

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) (a) "Independent entity," except as provided in Subsection (3)(b), is as defined in Section 63E-1-102.

(b) "Independent entity" does not include:

- (i) the Workers' Compensation Fund created in Section 31A-33-102; or
- (ii) the Utah State Retirement Office created in Section 49-11-201.

(4) "Participating local entity" means each of the following local entities, if the entity meets the size or budget thresholds established by the board under Subsection 63A-3-403(3)(e):

- (a) a county;
- (b) a municipality;
- (c) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts;
- (d) a special service district under Title 17D, Chapter 1, Special Service District Act;
- (e) a school district;
- (f) a charter school; and
- (g) an interlocal entity as defined in Section 11-13-103.

(5) "Participating state entity" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions.

(6) "Public financial information" means records that are required to be made available on the Utah Public Finance Website, a participating local entity's website, or an independent entity's website as required by this part, and as the term "public financial information" is defined by rule under Section 63A-3-404.

Amended by Chapter 185, 2014 General Session

63A-3-402. Utah Public Finance Website -- Establishment and administration -- Records disclosure -- Exceptions.

(1) There is created the Utah Public Finance Website to be administered by the Division of Finance with the technical assistance of the Department of Technology Services.

(2) The Utah Public Finance Website shall:

- (a) permit Utah taxpayers to:
 - (i) view, understand, and track the use of taxpayer dollars by making public financial information available on the Internet for participating state entities, independent entities, and participating local entities, using the Utah Public Finance Website; and
 - (ii) link to websites administered by participating local entities or independent entities that do not use the Utah Public Finance Website for the purpose of providing participating local entities' or independent entities' public financial information as required by this part and by rule under Section 63A-3-404;
- (b) allow a person who has Internet access to use the website without paying a fee;
- (c) allow the public to search public financial information on the Utah Public Finance Website using criteria established by the board;
- (d) provide access to financial reports, financial audits, budgets, or other financial documents that are used to allocate, appropriate, spend, and account for government funds, as may be established by rule under Section 63A-3-404;
- (e) have a unique and simplified website address;

(f) be directly accessible via a link from the main page of the official state website;

(g) include other links, features, or functionality that will assist the public in obtaining and reviewing public financial information, as may be established by rule under Section 63A-3-404; and

(h) include a link to school report cards published on the State Board of Education's website pursuant to Section 53A-1-1112.

(3) The division shall:

(a) establish and maintain the website, including the provision of equipment, resources, and personnel as necessary;

(b) maintain an archive of all information posted to the website;

(c) coordinate and process the receipt and posting of public financial information from participating state entities;

(d) coordinate and regulate the posting of public financial information by participating local entities and independent entities; and

(e) provide staff support for the advisory committee.

(4) (a) A participating state entity and each independent entity shall permit the public to view the entity's public financial information via the website, beginning with information that is generated not later than the fiscal year that begins July 1, 2008, except that public financial information for an:

(i) institution of higher education shall be provided beginning with information generated for the fiscal year beginning July 1, 2009; and

(ii) independent entity shall be provided beginning with information generated for the entity's fiscal year beginning in 2014.

(b) No later than May 15, 2009, the website shall:

(i) be operational; and

(ii) permit public access to participating state entities' public financial information, except as provided in Subsections (4)(c) and (d).

(c) An institution of higher education that is a participating state entity shall submit the entity's public financial information at a time allowing for inclusion on the website no later than May 15, 2010.

(d) No later than the first full quarter after July 1, 2014, an independent entity shall submit the entity's public financial information for inclusion on the Utah Public Finance Website or via a link to its own website on the Utah Public Finance Website.

(5) (a) The Utah Educational Savings Plan, created in Section 53B-8a-103, shall provide the following financial information to the division for posting on the Utah Public Finance Website:

(i) administrative fund expense transactions from its general ledger accounting system; and

(ii) employee compensation information.

(b) The plan is not required to submit other financial information to the division, including:

(i) revenue transactions;

(ii) account owner transactions; and

(iii) fiduciary or commercial information, as defined in Section 53B-12-102.

(6) (a) The following independent entities shall each provide administrative expense transactions from its general ledger accounting system and employee compensation information to the division for posting on the Utah Public Finance Website or via a link to a website administered by the independent entity:

- (i) the Utah Capital Investment Corporation, created in Section 63M-1-1207;
- (ii) the Utah Housing Corporation, created in Section 35A-8-704; and
- (iii) the School and Institutional Trust Lands Administration, created in Section 53C-1-201.

(b) For purposes of this part, an independent entity described in Subsection (6)(a) is not required to submit to the division, or provide a link to, other financial information, including:

- (i) revenue transactions of a fund or account created in its enabling statute;
- (ii) fiduciary or commercial information related to any subject if the disclosure of the information:

- (A) would conflict with fiduciary obligations; or
- (B) is prohibited by insider trading provisions;
- (iii) information of a commercial nature, including information related to:
 - (A) account owners, borrowers, and dependents;
 - (B) demographic data;
 - (C) contracts and related payments;
 - (D) negotiations;
 - (E) proposals or bids;
 - (F) investments;
 - (G) the investment and management of funds;
 - (H) fees and charges;
 - (I) plan and program design;
 - (J) investment options and underlying investments offered to account owners;
 - (K) marketing and outreach efforts;
 - (L) lending criteria;
 - (M) the structure and terms of bonding; and
 - (N) financial plans or strategies; and
- (iv) information protected from public disclosure by federal law.

(7) (a) As used in this Subsection (7):

- (i) "Local education agency" means a school district or a charter school.
- (ii) "New school building project" means the construction of a school that did not previously exist in a local education agency.

(iii) "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of an existing school in a local education agency with a project cost equal to or in excess of \$2,000,000.

(b) For each new school building project or significant school remodel, the local education agency shall:

- (i) prepare an annual school plant capital outlay report; and
- (ii) submit the report:
 - (A) to the division for publication on the Utah Public Finance Website; and
 - (B) in a format, including any raw data or electronic formatting, prescribed by

applicable division policy.

(c) The local education agency shall include in the capital outlay report described in Subsection (7)(b)(i) the following information as applicable to each new school building project or significant school remodel:

- (i) the name and location of the project or remodel;
- (ii) construction and design costs, including:
 - (A) the purchase price or lease terms of any real property acquired or leased for the project or remodel;
 - (B) facility construction;
 - (C) facility and landscape design;
 - (D) applicable impact fees; and
 - (E) furnishings and equipment;
- (iii) the gross square footage of the project or remodel;
- (iv) the year construction was completed; and
- (v) the final student capacity of the new school building project or, for a significant school remodel, the increase or decrease in student capacity created by the remodel.

(d) (i) For a cost, fee, or other expense required to be reported under Subsection (7)(c), the local education agency shall report the actual cost, fee, or other expense.

(ii) The division may require that a local education agency provide further itemized data on information listed in Subsection (7)(c).

(e) (i) No later than May 15, 2015, a local education agency shall provide the division a school plant capital outlay report for each new school building project and significant school remodel completed on or after July 1, 2004, and before May 13, 2014.

(ii) For a new school building project or significant school remodel completed after May 13, 2014, the local education agency shall provide the school plant capital outlay report described in this Subsection (7) to the division annually by a date designated by the division.

(8) A person who negligently discloses a record that is classified as private, protected, or controlled by Title 63G, Chapter 2, Government Records Access and Management Act, is not criminally or civilly liable for an improper disclosure of the record if the record is disclosed solely as a result of the preparation or publication of the Utah Public Finance Website.

Amended by Chapter 64, 2014 General Session

Amended by Chapter 185, 2014 General Session

63A-3-403. Utah Transparency Advisory Board -- Creation -- Membership -- Duties.

(1) There is created within the department the Utah Transparency Advisory Board comprised of members knowledgeable about public finance or providing public access to public information.

(2) The board consists of:

- (a) an individual appointed by the director of the Division of Finance;
- (b) an individual appointed by the executive director of the Governor's Office of Management and Budget;
- (c) an individual appointed by the governor on advice from the Legislative Fiscal Analyst;
- (d) one member of the Senate, appointed by the governor on advice from the president of the Senate;
- (e) one member of the House of Representatives, appointed by the governor on advice from the speaker of the House of Representatives;
- (f) an individual appointed by the director of the Department of Technology Services;
- (g) the director of the Division of Archives created in Section 63A-12-101 or the director's designee;
- (h) an individual who is a member of the State Records Committee created in Section 63G-2-501, appointed by the governor;
- (i) an individual representing counties, appointed by the governor;
- (j) an individual representing municipalities, appointed by the governor;
- (k) an individual representing special districts, appointed by the governor; and
- (l) two individuals who are members of the public and who have knowledge, expertise, or experience in matters relating to the board's duties under Subsection (10), appointed by the board members identified in Subsections (2)(a) through (k).

(3) The board shall:

- (a) advise the division on matters related to the implementation and administration of this part;
- (b) develop plans, make recommendations, and assist in implementing the provisions of this part;
- (c) determine what public financial information shall be provided by a participating state entity, independent entity, and participating local entity, if the public financial information:
 - (i) only includes records that:
 - (A) are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act;
 - (B) are an accounting of money, funds, accounts, bonds, loans, expenditures, or revenues, regardless of the source; and
 - (C) are owned, held, or administered by the participating state entity, independent entity, or participating local entity that is required to provide the record; and
 - (ii) is of the type or nature that should be accessible to the public via a website based on considerations of:
 - (A) the cost effectiveness of providing the information;

- (B) the value of providing the information to the public; and
- (C) privacy and security considerations;
- (d) evaluate the cost effectiveness of implementing specific information resources and features on the website;
- (e) establish size or budget thresholds to identify those local entities that qualify as participating local entities as defined in this part, giving special consideration to the budget and resource limitations of an entity with a current annual budget of less than \$10,000,000;
- (f) require participating local entities to provide public financial information in accordance with the requirements of this part, with a specified content, reporting frequency, and form;
- (g) require an independent entity's website or a participating local entity's website to be accessible by link or other direct route from the Utah Public Finance Website if the independent entity or participating local entity does not use the Utah Public Finance Website;
- (h) determine the search methods and the search criteria that shall be made available to the public as part of a website used by an independent entity or a participating local entity under the requirements of this part, which criteria may include:
 - (i) fiscal year;
 - (ii) expenditure type;
 - (iii) name of the agency;
 - (iv) payee;
 - (v) date; and
 - (vi) amount; and
- (i) analyze ways to improve the information on the Utah Public Finance Website so the information is more relevant to citizens, including through the use of:
 - (i) infographics that provide more context to the data; and
 - (ii) geolocation services, if possible.
- (4) The board shall annually elect a chair and a vice chair from its members.
- (5) (a) Each member shall serve a two-year term.
- (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the remainder of the unexpired term.
- (6) To accomplish its duties, the board shall meet as it determines necessary.
- (7) Reasonable notice shall be given to each member of the board before any meeting.
- (8) A majority of the board constitutes a quorum for the transaction of business.
- (9) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and

Expenses.

(10) (a) As used in Subsections (10) and (11):

(i) "Information website" means a single Internet website containing public information or links to public information.

(ii) "Public information" means records of state government, local government, or an independent entity that are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The board shall:

(i) study the establishment of an information website and develop recommendations for its establishment;

(ii) develop recommendations about how to make public information more readily available to the public through the information website;

(iii) develop standards to make uniform the format and accessibility of public information posted to the information website; and

(iv) identify and prioritize public information in the possession of a state agency or political subdivision that may be appropriate for publication on the information website.

(c) In fulfilling its duties under Subsection (10)(b), the board shall be guided by principles that encourage:

(i) (A) the establishment of a standardized format of public information that makes the information more easily accessible by the public;

(B) the removal of restrictions on the reuse of public information;

(C) minimizing limitations on the disclosure of public information while appropriately safeguarding sensitive information; and

(D) balancing factors in favor of excluding public information from an information website against the public interest in having the information accessible on an information website;

(ii) (A) permanent, lasting, open access to public information; and

(B) the publication of bulk public information;

(iii) the implementation of well-designed public information systems that ensure data quality, create a public, comprehensive list or index of public information, and define a process for continuous publication of and updates to public information;

(iv) the identification of public information not currently made available online and the implementation of a process, including a timeline and benchmarks, for making that public information available online; and

(v) accountability on the part of those who create, maintain, manage, or store public information or post it to an information website.

(d) The department shall implement the board's recommendations, including the establishment of an information website, to the extent that implementation:

(i) is approved by the Legislative Management Committee;

- (ii) does not require further legislative appropriation; and
 - (iii) is within the department's existing statutory authority.
- (11) The department shall, in consultation with the board and as funding allows, modify the information website described in Subsection (10) to:
- (a) by January 1, 2015, serve as a point of access for Government Records Access and Management requests for executive agencies;
 - (b) by January 1, 2016, serve as a point of access for Government Records Access and Management requests for:
 - (i) school districts;
 - (ii) charter schools;
 - (iii) public transit districts created under Title 17B, Chapter 2a, Part 8, Public Transit District Act;
 - (iv) counties; and
 - (v) municipalities;
 - (c) by January 1, 2017, serve as a point of access for Government Records Access and Management requests for:
 - (i) local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts; and
 - (ii) special service districts under Title 17D, Chapter 1, Special Service District Act;
 - (d) except as provided in Subsection (12)(a), provide link capabilities to other existing repositories of public information, including maps, photograph collections, legislatively required reports, election data, statute, rules, regulations, and local ordinances that exist on other agency and political subdivision websites;
 - (e) provide multiple download options in different formats, including nonproprietary, open formats where possible;
 - (f) provide any other public information that the board, under Subsection (10), identifies as appropriate for publication on the information website; and
 - (g) incorporate technical elements the board identifies as useful to a citizen using the information website.
- (12) (a) The department, in consultation with the board, shall establish by rule any restrictions on the inclusion of maps and photographs, as described in Subsection (11)(d), on the website described in Subsection (10) if the inclusion would pose a potential security concern.
- (b) The website described in Subsection (10) may not publish any record that is classified as private, protected, or controlled under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 75, 2014 General Session
Amended by Chapter 185, 2014 General Session
Amended by Chapter 387, 2014 General Session

63A-3-404. Rulemaking authority.

- (1) After consultation with the board, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall make rules to:

(a) require participating state entities to provide public financial information for inclusion on the Utah Public Finance Website;

(b) define, either uniformly for all participating state entities, or on an entity by entity basis, the term "public financial information" using the standards provided in Subsection 63A-3-403(3)(c); and

(c) establish procedures for obtaining, submitting, reporting, storing, and providing public financial information on the Utah Public Finance Website, which may include a specified reporting frequency and form.

(2) After consultation with the board, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance may make rules to:

(a) require a participating state or local entity to list certain expenditures made by a person under a contract with the entity; and

(b) if a list is required under Subsection (2)(a), require the following information to be included:

(i) the name of the participating state or local entity making the expenditure;

(ii) the name of the person receiving the expenditure;

(iii) the date of the expenditure;

(iv) the amount of the expenditure;

(v) the purpose of the expenditure;

(vi) the name of each party to the contract;

(vii) an electronic copy of the contract; or

(viii) any other criteria designated by rule.

Amended by Chapter 75, 2014 General Session

Amended by Chapter 185, 2014 General Session

Amended by Chapter 387, 2014 General Session

63A-3-405. Participation by local entities.

(1) (a) Not later than May 15, 2010, the following participating local entities, in conformity with the rules established under Section 63A-3-404, shall provide public financial information through the Utah Public Finance Website or their own website and provide a link to their website through the Utah Public Finance Website:

(i) school districts;

(ii) charter schools; and

(iii) public transit districts created under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(b) Participating local entities subject to this Subsection (1) shall permit information that is generated not later than the fiscal year that begins July 1, 2009, to be accessible via the website.

(2) (a) Not later than May 15, 2011, the following participating local entities, in conformity with the rules established under Section 63A-3-404, shall be required to provide public financial information through the Utah Public Finance Website or their own website and provide a link to their website through the Utah Public Finance Website:

(i) counties;

(ii) municipalities;
(iii) local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, that are not already required to report; and
(iv) special service districts under Title 17D, Chapter 1, Special Service District Act.

(b) Participating local entities subject to this Subsection (2) shall permit information that is generated not later than the fiscal year that begins July 1, 2010, to be accessible via the website.

(3) (a) On or before May 15, 2013, an interlocal entity that is a participating local entity in conformity with the rules established under Section 63A-3-404, shall, subject to Subsection (3)(b), provide public financial information through the Utah Public Finance Website or the interlocal entity's own website and provide a link to their website through the Utah Public Finance Website.

(b) A participating local entity subject to this Subsection (3) shall provide public financial information that is generated on or after the fiscal year that begins July 1, 2012, to be accessible via the website.

Amended by Chapter 94, 2012 General Session

63A-3-406. Submission of public financial information by a school district or charter school.

When submitting public financial information to the Utah Public Finance Website, a school district or charter school shall classify transactions in accordance with the uniform chart of accounts that school districts and charter schools are required to use for budgeting, accounting, financial reporting, and auditing purposes pursuant to rules adopted by the State Board of Education.

Enacted by Chapter 435, 2013 General Session

63A-3-501. Definitions.

As used in this part:

(1) (a) "Accounts receivable" or "receivables" means any amount due to a state agency from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third-party claims, sale of goods, sale of services, claims, and damages.

(2) "Administrative offset" means:

(a) a reduction of an individual's tax refund or other payments due to the individual to reduce or eliminate accounts receivable that the individual owes to a state agency; and

(b) a reduction of an entity's tax refund or other payments due to the entity to reduce or eliminate accounts receivable that the entity owes to a state agency.

(3) "Entity" means an individual, a corporation, partnership, or other

organization that pays taxes to or does business with the state.

(4) "Office" means the Office of State Debt Collection established by this part.

(5) "Past due" means any accounts receivable that the state has not received by the payment due date.

(6) "Restitution to victims" means restitution ordered by a court to be paid to a victim of an offense in a criminal or juvenile proceeding.

(7) (a) "State agency" includes:

(i) any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of Utah state government;

(ii) the legislative branch of state government; and

(iii) the judicial branches of state government, including justice courts.

(b) "State agency" does not include:

(i) any institution of higher education;

(ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or

(iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:

(A) Section 34A-1-405;

(B) Title 34A, Chapter 2, Workers' Compensation Act; or

(C) Title 34A, Chapter 3, Utah Occupational Disease Act.

(8) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

Amended by Chapter 286, 2014 General Session

63A-3-502. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Division of Finance.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to each state agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by each state agency;

- (g) prepare quarterly and annual reports of the state's receivables;
 - (h) create or coordinate a state accounts receivable database;
 - (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;
 - (j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;
 - (k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;
 - (l) establish an automated cash receipt process between each state agency;
 - (m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;
 - (n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;
 - (o) be a real party in interest for an account receivable referred to the office by any state agency or for any restitution to victims referred to the office by a court; and
 - (p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.
- (4) The office may:
- (a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;
 - (b) collect accounts receivables for higher education entities, if the higher education entity agrees;
 - (c) prepare a request for proposal for consulting services to:
 - (i) analyze the state's receivable management and collection efforts; and
 - (ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;
 - (d) contract with private or state agencies to collect past-due accounts;
 - (e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;
 - (f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 78-38a-204;
 - (g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:
 - (i) a fee to cover the administrative costs of collection, on accounts administered by the office;
 - (ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;
 - (iii) an interest charge that is:
 - (A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or
 - (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

- (iv) fees to collect accounts receivable for higher education;
- (h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;
- (i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;
- (j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;
- (k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;
- (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record; and
- (m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

- (i) is used only for the limited purpose of collecting accounts receivable; and
- (ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

- (i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and
- (ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require a state agency to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the

accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

(9) The summary shall include:

(a) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(c) any costs incurred in the collection process.

(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

Amended by Chapter 74, 2013 General Session

63A-3-503. Legal services.

The Office of the Attorney General shall:

(1) provide to the office all legal services and advice related to the collection of accounts receivable:

(a) owed to the state; or

(b) for which the office has collection responsibilities; and

(2) establish policies governing:

(a) legal matters involving accounts receivable; and

(b) litigation of past-due accounts receivable.

Amended by Chapter 74, 2013 General Session

63A-3-504. Rulemaking authority -- Collection techniques.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules:

(1) providing details, as necessary, for the distribution of debts collected in accordance with the priorities under Subsection 63A-3-505(3); and

(2) to govern collection techniques, which may include the use of:

(a) credit reporting bureaus;

(b) collection agencies;

(c) garnishments;

(d) liens;

(e) judgments; and

(f) administrative offsets.

Renumbered and Amended by Chapter 79, 2011 General Session

63A-3-505. State Debt Collection Fund.

(1) There is created an expendable special revenue fund entitled the "State Debt Collection Fund."

- (2) The fund consists of:
 - (a) all amounts appropriated to the fund under this chapter;
 - (b) fees and interest established by the office under Subsection 63A-3-502(4)(g); and
 - (c) except as otherwise provided by law, all postjudgment interest collected by the office or the state except postjudgment interest on restitution.
- (3) Money in this fund shall be used to pay for:
 - (a) the costs of the office in the performance of its duties under this chapter;
 - (b) restitution to victims to whom the debt is owed;
 - (c) interest accrued that is associated with the debt;
 - (d) principal on the debt to the state agencies or other entities that placed the receivable for collection; and
 - (e) other legal obligations including those ordered by a court.
- (4) (a) The fund may collect interest.
- (b) All interest earned from the fund shall be deposited in the General Fund.
- (5) The office shall ensure that money remaining in the fund at the end of the fiscal year that is not committed under the priorities established under Subsection (3) is deposited into the General Fund.
- (6) (a) The office shall report at least annually to the appropriations subcommittee assigned to review the budget of the Department of Administrative Services on the fund balance and its revenues and expenditures and administrative offsets.
- (b) The report shall include the amounts paid under each provision under Subsection (3).

Amended by Chapter 400, 2013 General Session

63A-3-506. Allocation of funds.

- (1) Except as provided in Subsection (2), the money collected by the office less the office's fees shall be allocated on a prorated basis to the various revenue types that generated the accounts receivable.
- (2) Notwithstanding the requirements of Subsection (1):
 - (a) federal cost allocation requirements for specific accounts receivable related to programs that are supported by federal funds take precedence over other cost allocation methods provided in this section; and
 - (b) the office shall use interest and fees collected on past due accounts receivable as provided in Section 63A-3-505.

Renumbered and Amended by Chapter 79, 2011 General Session

63A-3-507. Administrative garnishment order.

- (1) If a judgment is entered against a debtor, the office may, subject to Subsection (2), issue an administrative garnishment order against the debtor's personal property and wages in the possession of a third party in the same manner and with the same effect as if the order was a writ of garnishment issued in district court.

(2) The office may issue the administrative garnishment order if:

- (a) the order is:
 - (i) signed by the director or the director's designee; and
 - (ii) served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure; and
- (b) (i) the underlying debt is for nonpayment of restitution as defined in Section 77-38a-102; or
- (ii) the underlying debt is for nonpayment of an order for payment issued by the Labor Commission, established in Section 34A-1-103, for wage claims.

(3) An administrative garnishment order issued in accordance with this section is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 70C-7-103.

(4) An administrative garnishment order issued by the office shall:

- (a) contain a statement that includes:
 - (i) if known:
 - (A) the nature, location, account number, and estimated value of the property;

and

- (B) the name, address, and phone number of the person holding the property;
- (ii) whether any of the property consists of earnings;
- (iii) the amount of the judgment and the amount due on the judgment;
- (iv) the name, address, and phone number of any person known to the plaintiff to claim an interest in the property; and
- (v) that the plaintiff has attached or will serve the garnishee fee established in Section 78A-2-216;

- (b) identify the defendant, including:
 - (i) the defendant's name and address; and
 - (ii) if known:
 - (A) the last four digits of the defendant's Social Security number;
 - (B) the last four digits of the defendant's driver license; and
 - (C) the state in which the driver license was issued;
 - (c) include one or more interrogatories inquiring:
 - (i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;
 - (ii) whether the garnishee possesses or controls any property of the defendant, and, if so, the nature, location, and estimated value of the property;
 - (iii) (A) whether the garnishee knows of any property of the defendant in the possession or under the control of another; and
 - (B) the nature, location, and estimated value of the defendant's property in possession or under the control of another, and the name, address, and phone number of the person with possession or control;
 - (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;
 - (v) the date and manner of the garnishee's service of papers upon the defendant and any third party;

(vi) the dates on which previously served writs of continuing garnishment were served, if any; and

(vii) any other relevant information the office may request, including the defendant's position, rate, and method of compensation, pay period, or computation of the amount of the defendant's disposable earnings;

(d) notify the defendant of the defendant's right to reply to answers and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and

(e) state where the garnishee may deliver property.

(5) (a) A garnishee who acts in accordance with this section and the administrative garnishment issued by the office is released from liability unless an answer to an interrogatory is successfully controverted.

(b) Except as provided in Subsection (5)(c), if the garnishee fails to comply with an administrative garnishment issued by the office without a court or final administrative order directing otherwise, the garnishee is liable to the office for an amount ordered by the court, including:

(i) the value of the property or the value of the judgment, whichever is less;

(ii) reasonable costs; and

(iii) attorney fees incurred by the parties as a result of the garnishee's failure.

(c) If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(6) A creditor who files a motion for an order to show cause under this section shall attach to the motion a statement that the creditor has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.

(7) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a negotiable instrument if the instrument is not in the possession or control of the garnishee at the time of service of the administrative garnishment order.

(8) (a) A person indebted to the defendant may pay to the office the amount of the debt or an amount to satisfy the administrative garnishment.

(b) The office's receipt of an amount described in Subsection (8)(a) discharges the debtor for the amount paid.

(9) A garnishee may deduct from the property any liquidated claim against the defendant.

(10) (a) If a debt to the garnishee is secured by property, the office:

(i) is not required to apply the property to the debt when the office issues the administrative garnishment order; and

(ii) may obtain a court order authorizing the office to buy the debt and requiring the garnishee to deliver the property.

(b) Notwithstanding Subsection (10)(a)(i):

(i) the administrative garnishment order remains in effect; and

(ii) the office may apply the property to the debt.

(c) The office or a third party may perform an obligation of the defendant and require the garnishee to deliver the property upon completion of performance or, if performance is refused, upon tender of performance if:

(i) the obligation is secured by property; and

(ii) (A) the obligation does not require the personal performance of the defendant; and

(B) a third party may perform the obligation.

(11) (a) The office may issue a continuing garnishment order against a nonexempt periodic payment.

(b) This section is subject to the Utah Exemptions Act.

(c) A continuing garnishment order issued in accordance with this section applies to payments to the defendant from the date of service upon the garnishee until the earlier of the following:

(i) the last periodic payment;

(ii) the judgment upon which the administrative garnishment order is issued is stayed, vacated, or satisfied in full; or

(iii) the office releases the order.

(d) No later than seven days after the last day of each payment period, the garnishee shall with respect to that period:

(i) answer each interrogatory;

(ii) serve an answer to each interrogatory on the office, the defendant, and any other person who has a recorded interest in the property; and

(iii) deliver the property to the office.

(e) If the office issues a continuing garnishment order during the term of a writ of continuing garnishment issued by the district court, the order issued by the office:

(i) is tolled when a writ of garnishment or other income withholding is already in effect and is withholding greater than or equal to the maximum portion of disposable earnings described in Subsection (12);

(ii) is collected in the amount of the difference between the maximum portion of disposable earnings described in Subsection (12) and the amount being garnished by an existing writ of continuing garnishment if the maximum portion of disposable earnings exceed the existing writ of garnishment or other income withholding; and

(iii) shall take priority upon the termination of the current term of existing writs.

(12) The maximum portion of disposable earnings of an individual subject to seizure in accordance with this section is the lesser of:

(a) 25% of the defendant's disposable earnings for any other judgment; or

(b) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

(13) The administrative garnishment instituted in accordance with this section shall continue to operate and require that a person withhold the nonexempt portion of earnings at each succeeding earning disbursement interval until the total amount due in the garnishment is withheld or the garnishment is released in writing by the court or office.

Enacted by Chapter 69, 2013 General Session

63A-4-101. Risk manager -- Appointment -- Duties.

(1) The executive director shall appoint a risk manager, who shall be qualified by education and experience in the management of general property and casualty insurance.

(2) The risk manager shall:

(a) acquire and administer the following purchased by the state:

(i) all property, casualty insurance; and

(ii) subject to Section 34A-2-203, workers' compensation insurance;

(b) recommend that the executive director make rules:

(i) prescribing reasonable and objective underwriting and risk control standards for state agencies;

(ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;

(iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the fund;

(iv) prescribing procedures for making claims and proof of loss; and

(v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;

(c) implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents, and losses to assist state officers and employees in fulfilling their responsibilities for risk control and safety;

(d) coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including:

(i) the state fire marshal;

(ii) the director of the Division of Facilities Construction and Management;

(iii) the Department of Public Safety; and

(iv) institutions of higher education;

(e) maintain records necessary to fulfill the requirements of this section;

(f) manage the fund in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and

(g) inform the agency's governing body and the governor when any agency fails or refuses to comply with reasonable risk control recommendations made by the risk manager.

(3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each agency affected by it.

Amended by Chapter 275, 2006 General Session

63A-4-102. Risk manager -- Powers.

(1) The risk manager may:

(a) enter into contracts;

(b) purchase insurance;

(c) adjust, settle, and pay claims;

(d) pay expenses and costs;

- (e) study the risks of all state agencies and properties;
 - (f) issue certificates of coverage to state agencies for any risks covered by Risk Management Fund;
 - (g) make recommendations about risk management and risk reduction strategies to state agencies;
 - (h) in consultation with the attorney general, prescribe insurance and liability provisions to be included in all state contracts;
 - (i) review agency building construction, major remodeling plans, agency program plans, and make recommendations to the agency about needed changes to address risk considerations;
 - (j) attend agency planning and management meetings when necessary;
 - (k) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and
 - (l) solicit any needed information about agency plans, agency programs, or agency risks necessary to perform the risk manager's responsibilities under this part.
- (2) (a) The risk manager may expend money from the Risk Management Fund to procure and provide coverage to all state agencies and their indemnified employees, except those agencies or employees specifically exempted by statute.
- (b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.
- (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency, the director shall:
- (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate Committee established in Section 63A-1-114; and
 - (b) obtain the approval of the Legislature as required by Section 63J-1-410.
- (4) The director shall conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 183, 2009 General Session

63A-4-103. Risk management -- Duties of state agencies.

- (1) (a) Unless specifically authorized by statute to do so, a state agency may not:
- (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or
 - (ii) procure or provide liability insurance for the state.
- (b) (i) Notwithstanding the provisions of Subsection (1)(a), the State Board of Regents may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.
- (ii) The State Board of Regents shall provide copies of those purchased policies to the risk manager.

(iii) The State Board of Regents shall ensure that the state is named as additional insured on any of those policies.

(2) Each state agency shall:

(a) comply with reasonable risk related recommendations made by the risk manager;

(b) participate in risk management training activities conducted or sponsored by the risk manager;

(c) include the insurance and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;

(d) at each principal design stage, provide written notice to the risk manager that construction and major remodeling plans relating to agency buildings and facilities to be covered by the fund are available for review, for risk control purposes, and make them available to the risk manager for his review and recommendations; and

(e) cooperate fully with requests from the risk manager for agency planning, program, or risk related information, and allow the risk manager to attend agency planning and management meetings.

(3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Amended by Chapter 324, 2010 General Session

63A-4-104. Course-of-construction insurance for facilities constructed by This is the Place Foundation.

The risk manager may provide course-of-construction insurance for facilities constructed by This is the Place Foundation at This is the Place State Park and bill the Division of Parks and Recreation for the cost of the insurance.

Enacted by Chapter 225, 1998 General Session

63A-4-201. Risk Management Fund created -- Administration -- Use.

(1) (a) There is created the Risk Management Fund, which shall be administered by the risk manager.

(b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director.

(2) The risk manager may only use the fund to pay:

(a) insurance or reinsurance premiums;

(b) costs of administering the fund;

(c) loss adjustment expenses;

(d) risk control and related educational and training expenses; and

(e) loss costs which at the time of loss were eligible for payment under rules previously issued by the executive director under the authority of Section 63A-4-101.

(3) In addition to any money appropriated to the fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the fund:

- (a) any insured loss or loss expenses paid by insurance or reinsurance companies;
 - (b) the gross amount of all premiums and surcharges received under Section 63A-4-202;
 - (c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;
 - (d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);
 - (e) savings from amounts otherwise appropriated for participation in the fund; and
 - (f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.
- (4) (a) Pending disbursement, the risk manager shall provide surplus money in the fund to the state treasurer for investment as provided in Title 51, Chapter 7, State Money Management Act.
- (b) The state treasurer shall deposit all interest earned on invested fund money into the fund.

Amended by Chapter 303, 2011 General Session

63A-4-202. Determination of insurance premiums -- Information furnished by agencies -- Notice to agencies.

- (1) Each agency shall provide the risk manager with all reasonable information necessary to compute insurance premiums whenever he requests that information from them.
- (2) (a) The risk manager shall charge to each agency that receives insurance coverage from the Risk Management Fund its proportionate share of the cost incurred based upon actuarially sound rating techniques.
- (b) That premium shall include all costs of operating the fund as stated in Section 63A-4-201.
- (3) To enable each participating agency to meet its budgeting requirements, the risk manager shall provide each participating agency with projected insurance costs for the next two fiscal years within the time limits required.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-203. Refusal of agency to pay charges -- Notice to the Division of Finance for collection.

- (1) If any agency of the state refuses to remit any payment as charged by the risk manager within 30 days after the date due, the risk manager may certify to the director of the Division of Finance the fact of the refusal and the amount of the delinquent payment, together with a request that the amount be transferred from funds of the delinquent agency to the Risk Management Fund.
- (2) The risk manager shall mail a copy of the certification and request to the

delinquent agency.

(3) The risk manager shall resolve claims against the fund in an expeditious manner.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

(4) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and

(iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (4)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a school district employee, including what is not covered; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.

(ii) The information described in Subsection (4)(a) may include:

(A) comparisons the risk manager considers beneficial to a school district employee between:

(I) the coverage described in Subsection (4)(a); and

(II) other coverage the risk manager knows is commonly available to a school district employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund.

(d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district:

(i) at the time an employee enters into an employment contract and signs a separate acknowledgment of legal liability protection in accordance with Section 53A-3-411; or

(ii) if the school district does not provide the information to the employee pursuant to Subsection (4)(d)(i):

(A) within 30 days of the day the school district employee is hired by the school district; and

(B) by no later than April 15 of each calendar year.

Amended by Chapter 382, 2008 General Session

63A-4-204.5. Charter school participation in Risk Management Fund.

(1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school.

(2) (a) For purposes of administration, the state risk manager shall treat each charter school participating in the fund as a state agency.

(b) Each charter school participating in the fund shall comply with the provisions of this part that affect state agencies.

(3) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63G, Chapter 7, Utah Governmental Immunity Act of Utah; and

(iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (3)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a charter school employee, including what is not covered; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.

(ii) The information described in Subsection (3)(a) may include:

(A) comparisons the risk manager considers beneficial to a charter school employee between:

(I) the coverage described in Subsection (3)(a); and

(II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund.

(d) A charter school that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school:

(i) within 30 days of the day the charter school employee is hired by the charter school; and

(ii) by no later than April 15 of each calendar year.

Amended by Chapter 382, 2008 General Session

63A-4-205.5. Risk management -- Coverage of the Utah Communications Authority.

The Utah Communications Authority established under authority of Title 63H, Chapter 7, Utah Communications Authority Act, may participate in the Risk Management Fund.

Amended by Chapter 320, 2014 General Session

63A-4-206. Limits on use of risk management data as evidence.

Notwithstanding any other provisions of law, any reports, recommendations, surveys, schedules, lists, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Risk Management Fund may not be admitted into evidence in any court, or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those reports, recommendations, surveys, schedules, lists, or data.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-207. Records of risk management.

(1) A record provided to the Division of Risk Management by any governmental entity or political subdivision covered by the Risk Management Fund for the purpose of risk control or claims activities of the division shall be considered a record of the originating governmental entity or political subdivision for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, if the originating governmental entity or political subdivision retains a copy of the record.

(2) Notwithstanding Subsection 63G-2-201(5), records may be exchanged between the Division of Risk Management and any governmental entity or political subdivision covered by the Risk Management Fund without meeting the requirements of Section 63G-2-206, provided that they are used only for purposes of risk control or

claims activities.

Amended by Chapter 382, 2008 General Session

63A-5-101. Creation -- Composition -- Appointment -- Per diem and expenses -- Administrative services.

(1) (a) There is created a State Building Board composed of eight members, seven of whom shall be appointed by the governor for terms of four years.

(b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) The executive director of the Governor's Office of Management and Budget or the executive director's designee is a nonvoting member of the board.

(4) Each member shall hold office until a successor is appointed and qualified, but no member shall serve more than two consecutive terms.

(5) One member shall be designated by the governor as chair.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The members of the board are not required to give bond for the performance of their official duties.

(8) The department shall provide administrative and staff services to enable the board to exercise its powers and discharge its duties, and shall provide necessary space and equipment for the board.

Amended by Chapter 310, 2013 General Session

63A-5-102. Meetings of board -- Rules of procedure -- Quorum.

(1) The chair or any two members may call meetings of the State Building Board.

(2) The board shall adopt rules of procedure for the conduct of its meetings.

(3) Four members of the board shall constitute a quorum for the transaction of business.

(4) All meetings of the board shall be conducted in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 199, 2012 General Session

63A-5-103. Board -- Powers.

- (1) The State Building Board shall:
 - (a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;
 - (b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);
 - (c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;
 - (d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;
 - (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
 - (i) that are necessary to discharge its duties and the duties of the Division of Facilities Construction and Management;
 - (ii) to establish standards and requirements for life cycle cost-effectiveness of state facility projects; and
 - (iii) to govern the disposition of real property by the division and establish factors, including appraised value and historical significance, in evaluating the disposition;
 - (f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for planning, design, and construction of new state facilities and for improvements to existing state facilities, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:
 - (i) the need for the building or facility;
 - (ii) the effectiveness of its design;
 - (iii) the efficiency of energy use; and
 - (iv) the usefulness of the building or facility over its lifetime;
 - (g) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year; and
 - (h) assure the efficient use of all building space.
- (2) In order to provide adequate information upon which the State Building Board may make its recommendation under Subsection (1), any state agency requesting new full-time employees for the next fiscal year shall report those anticipated requests to the building board at least 90 days before the annual general session in which the request is made.
- (3) (a) The State Building Board shall ensure that the five-year building plan required by Subsection (1)(c) includes:
 - (i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's, department's, commission's, and institution's present and future needs;
 - (ii) information, and space use data for all state-owned and leased facilities;
 - (iii) substantiating data to support the adequacy of any projected plans;
 - (iv) a summary of all statewide contingency reserve and project reserve

balances as of the end of the most recent fiscal year;

(v) a list of buildings that have completed a comprehensive facility evaluation by an architect/engineer or are scheduled to have an evaluation;

(vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and

(vii) for projects recommended in the first two years of the five-year building plan:

(A) detailed estimates of the cost of each project;

(B) the estimated cost to operate and maintain the building or facility on an annual basis;

(C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;

(D) the estimated number of new agency full-time employees expected to be housed in the building or facility;

(E) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;

(F) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and

(G) the estimated cost of any required support facilities.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Building Board may make rules prescribing the format for submitting the information required by this Subsection (3).

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Building Board may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as certified by the director.

(b) In making those rules, the State Building Board shall provide for the fair and equitable treatment of bidders.

(5) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state.

(b) The board may take any other action allowed by law.

(c) If any violation of a rule adopted by the board is also an offense under Title 76, Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs allowed under Subsection (1)(e) in addition to any criminal prosecution.

Amended by Chapter 250, 2013 General Session

63A-5-104. Definitions -- Capital development and capital improvement process -- Approval requirements -- Limitations on new projects -- Emergencies.

(1) As used in this section:

(a) "Capital developments" means a:

(i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;

- (ii) new facility with a construction cost of \$500,000 or more; or
- (iii) purchase of real property where an appropriation is requested to fund the purchase.
- (b) "Capital improvements" means a:
 - (i) remodeling, alteration, replacement, or repair project with a total cost of less than \$2,500,000;
 - (ii) site and utility improvement with a total cost of less than \$2,500,000; or
 - (iii) new facility with a total construction cost of less than \$500,000.
- (c) (i) "New facility" means the construction of a new building on state property regardless of funding source.
 - (ii) "New facility" includes:
 - (A) an addition to an existing building; and
 - (B) the enclosure of space that was not previously fully enclosed.
 - (iii) "New facility" does not mean:
 - (A) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than \$2,500,000; or
 - (B) the construction of facilities that do not fully enclose a space.
- (d) "Replacement cost of existing state facilities and infrastructure" means the replacement cost, as determined by the Division of Risk Management, of state facilities, excluding auxiliary facilities as defined by the State Building Board and the replacement cost of infrastructure as defined by the State Building Board.
- (e) "State funds" means public money appropriated by the Legislature.
- (2) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.
- (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development project may not be constructed on state property without legislative approval.
- (b) Legislative approval is not required for a capital development project that consists of the design or construction of a new facility if the State Building Board determines that:
 - (i) the requesting state agency, commission, department, or institution has provided adequate assurance that:
 - (A) state funds will not be used for the design or construction of the facility; and
 - (B) the state agency, commission, department, or institution has a plan for funding in place that will not require increased state funding to cover the cost of operations and maintenance to, or state funding for, immediate or future capital improvements to the resulting facility; and
 - (ii) the use of the state property is:
 - (A) appropriate and consistent with the master plan for the property; and
 - (B) will not create an adverse impact on the state.
- (c) (i) The Division of Facilities Construction and Management shall maintain a record of facilities constructed under the exemption provided in Subsection (3)(b).
- (ii) For facilities constructed under the exemption provided in Subsection (3)(b),

a state agency, commission, department, or institution may not request:

(A) increased state funds for operations and maintenance; or

(B) state capital improvement funding.

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds that has been approved by the State Building Board;

(ii) a facility to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University;

(iii) a facility to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant money from the state, or with donated services or materials;

(iv) a capital project that:

(A) is funded by:

(I) the Uintah Basin Revitalization Fund; or

(II) the Navajo Revitalization Fund; and

(B) does not provide a new facility for a state agency or higher education institution; or

(v) a capital project on school and institutional trust lands that is funded by the School and Institutional Trust Lands Administration from the Land Grant Management Fund and that does not fund construction of a new facility for a state agency or higher education institution.

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation:

(A) as a result of an exchange of real property under Section 72-5-111; or

(B) as a result of a sale or exchange of real property from a maintenance facility if the real property is exchanged for, or the proceeds from the sale of the real property are used for, another maintenance facility, including improvements for a maintenance facility and real property.

(ii) When the Department of Transportation approves a sale or exchange under Subsection (3)(e), it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Infrastructure and General Government Appropriations Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built or improved under this exemption.

(4) (a) (i) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) The list shall identify:

(A) a single project that costs more than \$1,000,000;

(B) multiple projects within a single building or facility that collectively cost more than \$1,000,000;

(C) a single project that will be constructed over multiple years with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

(D) multiple projects within a single building or facility with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

(E) a single project previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000; and

(F) multiple projects within a single building or facility previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000.

(b) Unless otherwise directed by the Legislature, the State Building Board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(c) In prioritizing capital improvements, the State Building Board shall consider the results of facility evaluations completed by an architect/engineer as stipulated by the building board's facilities maintenance standards.

(d) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building Board shall allocate at least 80% of the funds that the Legislature appropriates for capital improvements to:

(i) projects that address:

(A) a structural issue;

(B) fire safety;

(C) a code violation; or

(D) any issue that impacts health and safety;

(ii) projects that upgrade:

(A) an HVAC system;

(B) an electrical system;

(C) essential equipment;

(D) an essential building component; or

(E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or

(iii) projects that demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.

(e) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building Board shall allocate no more than 20% of the funds that the Legislature appropriates for capital improvements to:

(i) remodeling and aesthetic upgrades to meet state programmatic needs; or

(ii) construct an addition to an existing building or facility.

(f) The State Building Board may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the project.

(g) The State Building Board may provide capital improvement funding to a single project, or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is \$2,500,000 or more, if:

(i) the capital improvement project or multiple projects require more than one year to complete; and

(ii) the Legislature has affirmatively authorized the capital improvement project or multiple projects to be funded in phases.

(h) In prioritizing and allocating capital improvement funding, the State Building

Board shall comply with the requirement in Subsection 63B-23-101(2)(f).

(5) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

(6) If construction of a new building or facility will be paid for by nonstate funds, but will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for:

(a) the portion of operations and maintenance, if any, that will require an immediate or future increase in state funding; and

(b) the portion of capital improvements, if any, that will require an immediate or future increase in state funding.

(7) (a) Except as provided in Subsection (7)(b) or (c), the Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities and infrastructure to capital improvements.

(b) (i) As used in this Subsection (7)(b):

(A) "Education Fund budget deficit" is as defined in Section 63J-1-312; and

(B) "General Fund budget deficit" is as defined in Section 63J-1-312.

(ii) If the Legislature determines that an Education Fund budget deficit or a General Fund budget deficit exists, the Legislature may, in eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings and infrastructure.

(c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.

(ii) For the 2013-14 fiscal year, the amount appropriated to capital improvements shall be reduced to 0.9% of the replacement cost of state facilities.

(8) It is the policy of the Legislature that a new building or facility be approved and funded for construction in a single budget action, therefore the Legislature may not fund the programming, design, and construction of a new building or facility in phases over more than one year unless the Legislature has approved each phase of the funding for the construction of the new building or facility by the affirmative vote of two-thirds of all the members elected to each house.

(9) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The State Building Board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

(i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

(ii) the Legislature at its next annual general session.

(10) (a) The State Building Board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding.

- (b) The State Building Board shall ensure that the rule:
 - (i) reserves funds for the Division of Facilities Construction and Management for emergency projects; and
 - (ii) allows the delegation of projects to some institutions and agencies with the requirement that a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.
- (11) It is the intent of the Legislature that in funding capital improvement requirements under this section the General Fund be considered as a funding source for at least half of those costs.
- (12) (a) Subject to Subsection (12)(b), at least 80% of the state funds appropriated for capital improvements shall be used for maintenance or repair of the existing building or facility.
- (b) The State Building Board may modify the requirement described in Subsection (12)(a) if the State Building Board determines that a different allocation of capital improvements funds is in the best interest of the state.

Amended by Chapter 113, 2014 General Session
Amended by Chapter 195, 2014 General Session

63A-5-201. Creation -- Administration.

There is created within the department the Division of Facilities Construction and Management, to be administered by a director.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-5-202. Definitions.

As used in this part:

- (1) "Director" means director of the Division of Facilities Construction and Management.
- (2) "Division" means Division of Facilities Construction and Management.

Enacted by Chapter 212, 1993 General Session

63A-5-203. Director of division -- Appointment.

The executive director shall appoint the director of the division with the approval of the governor.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-5-204. Specific powers and duties of director.

- (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the same meaning as provided in Section 63C-9-102.
- (2) (a) The director shall:
 - (i) recommend rules to the executive director for the use and management of facilities and grounds owned or occupied by the state for the use of its departments and

agencies;

(ii) supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts or other specific legislation, to the various departments, commissions, institutions, and agencies in all buildings or space owned, leased, or rented by or to the state, except capitol hill facilities and capitol hill grounds and except as otherwise provided by law;

(iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3, Division of Facilities Construction and Management Leasing;

(iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature through the appropriations act or other specific legislation, and hold title to, in the name of the division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its agencies;

(v) adopt and use a common seal, of a form and design determined by the director, and of which courts shall take judicial notice;

(vi) file a description and impression of the seal with the Division of Archives;

(vii) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or interest in property belonging to the state or any of its departments, except institutions of higher education and the School and Institutional Trust Lands Administration;

(viii) report all properties acquired by the state, except those acquired by institutions of higher education, to the director of the Division of Finance for inclusion in the state's financial records;

(ix) before charging a rate, fee, or other amount for services provided by the division's internal service fund to an executive branch agency, or to a subscriber of services other than an executive branch agency:

(A) submit the proposed rates, fees, and cost analysis to the Rate Committee established in Section 63A-1-114; and

(B) obtain the approval of the Legislature as required by Section 63J-1-410;

(x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available;

(xi) implement the State Building Energy Efficiency Program under Section 63A-5-701; and

(xii) take all other action necessary for carrying out the purposes of this chapter.

(b) Legislative approval is not required for acquisitions by the division that cost less than \$250,000.

(3) (a) The director shall direct or delegate maintenance and operations, preventive maintenance, and facilities inspection programs and activities for any department, commission, institution, or agency, except:

(i) the State Capitol Preservation Board; and

(ii) state institutions of higher education.

(b) The director may choose to delegate responsibility for these functions only when the director determines that:

(i) the department or agency has requested the responsibility;

(ii) the department or agency has the necessary resources and skills to comply with facility maintenance standards approved by the State Building Board; and

(iii) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and state institutions of higher education are exempt from Division of Facilities Construction and Management oversight.

(d) Each state institution of higher education shall comply with the facility maintenance standards approved by the State Building Board.

(e) Except for the State Capitol Preservation Board, agencies and institutions that are exempt from division oversight shall annually report their compliance with the facility maintenance standards to the division in the format required by the division.

(f) The division shall:

(i) prescribe a standard format for reporting compliance with the facility maintenance standards;

(ii) report agency and institution compliance or noncompliance with the standards to the Legislature; and

(iii) conduct periodic audits of exempt agencies and institutions to ensure that they are complying with the standards.

(4) (a) In making any allocations of space under Subsection (2), the director shall:

(i) conduct studies to determine the actual needs of each department, commission, institution, or agency; and

(ii) comply with the restrictions contained in this Subsection (4).

(b) The supervision and control of the legislative area is reserved to the Legislature.

(c) The supervision and control of the judicial area is reserved to the judiciary for trial courts only.

(d) The director may not supervise or control the allocation of space for entities in the public and higher education systems.

(e) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.

(5) The director may:

(a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;

(b) sue and be sued in the name of the division; and

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature, whatever real or personal property that is necessary for the discharge of the director's duties.

(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

(a) the Office of Trust Administrator;

(b) the Department of Transportation;

- (c) the Division of Forestry, Fire, and State Lands;
 - (d) the Department of Natural Resources;
 - (e) the Utah National Guard;
 - (f) any area vocational center or other institution administered by the State Board of Education;
 - (g) any institution of higher education; and
 - (h) the Utah Science Technology and Research Governing Authority.
- (7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:
- (a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329; and
 - (b) carry a minimum of \$1,000,000 of errors and omissions insurance.
- (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

Amended by Chapter 183, 2009 General Session
Amended by Chapter 344, 2009 General Session

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

- (1) As used in this section:
 - (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
 - (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
 - (c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:
 - (i) works at least 30 hours per calendar week; and
 - (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.
 - (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
 - (e) "Qualified health insurance coverage" is as defined in Section 26-40-115.
 - (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
- (2) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director may:
 - (a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and
 - (b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design or construction contracts entered into by the division or the State Building Board on or after July 1, 2009, and:

(i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5;

and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i) or (ii) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(Aa) the Utah Insurance Department;

(Bb) an actuary selected by the contractor or the contractor's insurer; or

(Cc) an underwriter who is responsible for developing the employer group's premium rates;

(B) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this Subsection (3), which may include:

(I) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(II) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(III) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(IV) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(C) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(e).

(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (3)(g)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3)(b).

(iii) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (3)(g).

(h) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created by Section 26-18-402.

(i) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(i) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(ii) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(4) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(5) The division shall make all payments to the contractor for completed work in accordance with the contract and pay the interest specified in the contract on any payments that are late.

(6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 425, 2014 General Session

63A-5-206. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

(a) "Capital developments" and "capital improvements" have the same meaning as provided in Section 63A-5-104.

(b) "Compliance agency" has the same meaning as provided in Section 15A-1-202.

(c) (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.

(ii) "Facility" does not mean an unoccupied structure that is a component of the state highway system.

(d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.

(f) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than \$100,000, unless

there is memorandum of understanding between the director and an institution of higher education that permits the institution of higher education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000.

(ii) A state entity may exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if:

(A) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and

(B) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvements, and code inspection standards.

(b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.

(c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency shall approve the location, design, plans, and specifications.

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

(a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

(b) is within a designated research park at the University of Utah or Utah State University;

(c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(4) (a) (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

(b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency or institution and that are located on state property, the State Building Board may authorize the owner to administer the design and

construction of the project instead of the division.

(5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:

(a) oversee and manage the construction without involvement, oversight, or management from the division; or

(b) arrange for management of the project by the division.

(6) (a) The role of compliance agency as provided in Title 15A, State Construction and Fire Codes Act, shall be provided by:

(i) the director, for projects administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for projects under Subsection (3)(a);

(iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

(iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or

(v) the institution, for projects exempt from the division's administration under Subsection (5)(a).

(b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).

(c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

(i) only review plans and inspect construction to enforce the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(ii) charge a building permit fee of no more than the amount it could have charged if the land upon which the improvements are located were not owned by the state.

(d) (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Sections 10-9a-304 and 17-27a-304.

(ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and

(b) is appropriate for the purpose and setting of the project.

(8) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective.

(9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

(11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

(12) (a) The director, the director's designee, or the state entity to whom control has been designated under Subsection (4), shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:

(i) the nature of the project has been significantly altered since prior notification;

(ii) the project would significantly change the nature of the functions presently conducted at the location; or

(iii) the project is new construction.

(b) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss these issues.

(13) (a) (i) Before beginning the construction of student housing on property owned by the state or a public institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

(ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:

(A) the county in whose unincorporated area the privately owned residential property is located; or

(B) the municipality in whose boundaries the privately owned residential

property is located.

(b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.

(ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Amended by Chapter 14, 2011 General Session

63A-5-207. Availability of appropriated funds -- Excessive obligations prohibited -- Exceptions.

(1) The director shall assure, unless otherwise specifically instructed by the terms of the appropriation of a particular project, that no obligations beyond the authorized funding are incurred in the construction of any project authorized by the Legislature.

(2) The director may consent to the drafting of a plan or the awarding of a contract that will exceed in cost the funding currently available for the project in question only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.

Amended by Chapter 231, 2000 General Session

63A-5-208. Definitions -- Certain public construction bids to list subcontractors -- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process -- Penalties.

(1) As used in this section:

(a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.

(b) "Subcontractor" means any person or entity under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.

(c) "Subcontractor" includes a trade contractor or specialty contractor.

(d) "Subcontractor" does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

(2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.

(3) (a) (i) (A) On each public construction project, the director shall require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each subcontractor's name, bid amount, and other information required by rule.

(B) Other bidders who are not one of the apparent lowest three bidders may also submit a list of their first-tier subcontractors containing the information required by this Subsection (3).

(C) The director may not consider any bid submitted by a bidder if the bidder

fails to submit a subcontractor list meeting the requirements of this section.

(ii) On projects where the contractor's total bid is less than \$500,000, subcontractors whose bid is less than \$20,000 need not be listed.

(iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors whose bid is less than \$35,000 need not be listed.

(b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays.

(ii) This list does not limit the director's right to authorize a change in the listing of any subcontractor.

(c) The bidders shall verify that all subcontractors listed as part of their bids are licensed as required by state law.

(d) Twenty-four hours after the bid opening, the contractor may change the contractor's subcontractors only after:

(i) receiving permission from the director; and

(ii) establishing that:

(A) the change is in the best interest of the state; and

(B) the contractor establishes reasons for the change that meet the standards established by the State Building Board.

(e) If the director approves any changes in subcontractors that result in a net lower contract price for subcontracted work, the total of the prime contract may be reduced to reflect the changes.

(4) (a) A bidder may list himself as a subcontractor when the bidder is currently licensed to perform the portion of the work for which the bidder lists himself as a subcontractor and:

(i) the bidder intends to perform the work of a subcontractor himself; or

(ii) the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to:

(A) obtain a bid from a qualified subcontractor; or

(B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be reasonable.

(b) (i) When the bidder intends to perform the work of a subcontractor himself, the director may, by written request, require that the bidder provide the director with information indicating the bidder's:

(A) previous experience in the type of work to be performed; and

(B) qualifications for performing the work.

(ii) The bidder must respond in writing within five business days of receiving the director's written request.

(iii) If the bidder's submitted information causes the director to reasonably believe that self-performance of the portion of the work by the bidder is likely to yield a substandard finished product, the director shall:

(A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or

(B) reject the bidder's bid.

(c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later date, the bidder shall provide documentation with the subcontractor list

describing:

(A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and

(B) why the bidder was unable to obtain a qualified subcontractor bid.

(ii) If the bidder who intends to obtain a subcontractor to perform the work at a later date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified subcontractor bid.

(iii) The director may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.

(5) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.

(6) (a) The director shall, in consultation with the State Building Board, prepare draft rules establishing a process for resolving disputes involved with contracts under the division's procurement authority.

(b) The draft rules shall be presented to the Government Operations Interim Committee for review, comment, and recommendations before August 31, 2004.

(c) The director shall consider, and the rules may include:

(i) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;

(ii) requirements for the filing of claims, including notification, timeframes, and documentation;

(iii) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;

(iv) required time periods, not to exceed 60 days, for the resolution of the claim;

(v) provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;

(vi) provision for the extension of required time periods if the claimant agrees;

(vii) requirements that decisions be issued in writing;

(viii) provisions for administrative appeals of the decision;

(ix) provisions for the timely payment of claims after resolution of the dispute, including any appeals;

(x) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;

(xi) a requirement that a claim or dispute that does not include a monetary claim against the division or its agents is not limited to the dispute resolution process provided for in this Subsection (6);

(xii) requirements for claims and disputes to be eligible for this dispute resolution process;

(xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

(xiv) the circumstances under which a subcontractor may file a claim directly with the division.

(d) Persons pursuing claims under the process required by this Subsection (6):

(i) are bound by the decision reached under this process unless the decision is properly appealed; and

(ii) may not pursue claims or disputes under the dispute resolution process established in Title 63G, Chapter 6a, Utah Procurement Code.

(7) In addition to all other reasons allowed by law or rule, the director may reject all bids if none of the bidders whose bid is within the budget of the project submit a subcontractor list that meets the requirements of this section.

(8) Any violation of this section, or any fraudulent misrepresentation by a contractor, subcontractor, or supplier, may be grounds for:

(a) the contractor, subcontractor, or supplier to be suspended or debarred by the director; or

(b) the contractor or subcontractor to be disciplined by the Division of Professional and Occupational Licensing.

Amended by Chapter 91, 2012 General Session

Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

**63A-5-209. Building appropriations supervised by director --
Contingencies -- Disposition of project reserve funds -- Set aside for Utah
Percent-for-Art Program.**

(1) The director shall:

(a) (i) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made; and

(ii) specifically allocate money appropriated when more than one project is included in any single appropriation without legislative directive;

(b) (i) expend the amount necessary from appropriations for planning, engineering, and architectural work; and

(ii) (A) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund under Section 63A-5-211 in the preparation of plans, engineering, and specifications; and

(B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund; and

(c) hold in a statewide contingency reserve the amount budgeted for contingencies:

(i) in appropriations for the construction or remodeling of facilities; and

(ii) which may be over and above all amounts obligated by contract for planning, engineering, architectural work, sites, and construction contracts.

(2) (a) The director shall base the amount budgeted for contingencies on a sliding scale percentage of the construction cost ranging from:

(i) 4-1/2% to 6-1/2% for new construction; and

(ii) 6% to 9-1/2% for remodeling projects.

(b) The director shall hold the statewide contingency funds to cover:

(i) costs of change orders; and

(ii) unforeseen, necessary costs beyond those specifically budgeted for the project.

(c) (i) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve.

(ii) The Legislature may reappropriate to other building needs, including the cost of administering building projects, any amount from the statewide contingency reserve that is in excess of the reserve required to meet future contingency needs.

(3) (a) The director shall hold in a separate reserve those state appropriated funds accrued through bid savings and project residual as a project reserve.

(b) The director shall account for the funds accrued under Subsection (3)(a) in separate accounts as follows:

(i) bid savings and project residual from a capital improvement project, as defined in Section 63A-5-104; and

(ii) bid savings and project residual from a capital development project, as defined in Section 63A-5-104.

(c) The State Building Board may authorize the use of project reserve funds in the account described in Subsection (3)(b)(i) for a capital improvement project:

(i) approved under Section 63A-5-104; and

(ii) for which funds are not allocated.

(d) The director may:

(i) authorize the use of project reserve funds in the accounts described in Subsection (3)(b) for the award of contracts in excess of a project's construction budget if the use is required to meet the intent of the project; and

(ii) transfer money from the account described in Subsection (3)(b)(i) to the account described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction budget.

(e) The director shall report to the Office of the Legislative Fiscal Analyst within 30 days:

(i) an authorization under Subsection (3)(c); or

(ii) a transfer under Subsection (3)(d).

(f) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs, including the cost of administering building projects.

(4) If any part of the appropriation for a building project, other than the part set aside for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, remains unencumbered after the award of construction and professional service contracts and establishing a reserve for fixed and moveable equipment, the balance of the appropriation is dedicated to the project reserve and does not revert to the General Fund.

(5) (a) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside for the Utah Percent-for-Art Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4.

(b) The director shall release to the Division of Fine Arts any funds included in an appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art Program.

(c) Funds from appropriations for any state building or facility of which any part is derived from the issuance of bonds, to the extent it would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds, may not be set aside.

Amended by Chapter 163, 2010 General Session

63A-5-211. Planning Fund expenditures authorized -- Ceiling on expenditures -- Recovery.

(1) The Planning Fund shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a meaningful cost estimate of any facility or improvement with a demonstrable or immediate need.

(2) The director may make expenditures from the Planning Fund in order to provide planning information to the State Building Board, the governor, and the Legislature, up to a maximum of \$350,000 in outstanding Planning Fund commitments.

(3) (a) The director shall authorize all payments made from the Planning Fund.

(b) These payments shall be a charge on the project for which they were drawn.

(c) The amount paid shall be credited to the Planning Fund when the Legislature appropriates money for any building project for which planning costs have previously been paid from the Planning Fund.

(4) (a) Money may also be expended from the Planning Fund for architectural and engineering services incident to the planning and preparation of applications for funds on construction financed by other than state sources, including federal grants.

(b) However, upon approval of such financing, the money spent for architectural and engineering services shall be returned as a reimbursement to the Planning Fund.

Amended by Chapter 303, 2011 General Session

63A-5-215. Disposition of proceeds received by division from sale of property.

(1) The money received by the division from the sale or other disposition of property shall be paid into the state treasury and becomes a part of the funds provided by law for carrying out the building program of the state, and are appropriated for that purpose.

(2) The proceeds from sales of property belonging to or used by a particular state institution or agency shall, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of that institution or agency.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-5-216. Gifts, grants, and donations to division.

Gifts, grants, and donations may be received by the division or by the state to further the purposes of this part, and shall not revert to the General Fund.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-5-219. Transfer from project reserve money.

(1) With the approval of and through an appropriation by the Legislature, the division shall transfer at least \$100,000 annually from the project reserve money to the General Fund to pay for personal service expenses associated with the management of construction projects.

(2) With the approval of and as directed by the Legislature, the division shall transfer additional money from the project reserve money to pay administrative costs associated with the management of construction projects and other division responsibilities.

Amended by Chapter 20, 2002 Special Session 5

63A-5-220. Definitions -- Creation of Utah State Developmental Center Land Fund -- Use of fund.

(1) As used in this section:

(a) "Developmental center" means the Utah State Developmental Center described in Section 62A-5-201.

(b) "DSPD" means the Division of Services for People with Disabilities within the Department of Human Services.

(c) "Long-term lease" means:

(i) a lease with a term of five years or more; or

(ii) a lease with a term of less than five years that may be unilaterally renewed by the lessee.

(2) Notwithstanding Section 63A-5-215, any money received by the division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center shall be deposited in the restricted special revenue fund created in Subsection (3).

(3) (a) There is created an expendable special revenue fund known as the "Utah State Developmental Center Land Fund."

(b) The Division of Finance shall deposit the following revenues into the expendable special revenue fund:

(i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center; and

(ii) revenue from the sale, lease, or other disposition of water rights associated with the developmental center.

(c) The state treasurer shall invest money in the fund described in Subsection (3) according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and the interest shall remain with the restricted special revenue fund.

(d) (i) Except as provided in Subsection (3)(d)(ii), an expenditure or appropriation may not be made from the expendable special revenue fund.

(ii) (A) Subject to the requirements of Subsection (3)(d)(ii)(B), the Division of Services for People with Disabilities may spend interest earned or invested from the Utah State Developmental Center Land Fund for the benefit of the Utah State

Developmental Center and programs described in Title 62A, Chapter 5, Services for People with Disabilities.

(B) Expendable special revenue fund money may not be expended unless approved by the director of the Division of Services for People with Disabilities within the Department of Human Services in consultation with the executive director of the department.

(4) (a) Notwithstanding Section 65A-4-1, any sale or disposition of real property or water rights associated with the developmental center shall be conducted as provided in this Subsection (4).

(b) The division shall secure the concurrence of DSPD and the approval of the governor before making the sale or other disposition of land or water rights.

(c) In addition to the concurrences required by Subsection (4)(b), the division shall secure the approval of the Legislature before offering the land or water rights for sale, exchange, or long-term lease.

(d) The division shall sell or otherwise dispose of the land or water rights as directed by the governor.

(e) The division may not sell, exchange, or enter into a long-term lease of the land or water rights for a price or estimated value below the average of two appraisals conducted by an appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

Amended by Chapter 21, 2013 General Session

63A-5-222. Critical land near state prison -- Definitions -- Preservation as open land -- Management and use of land -- Restrictions on transfer -- Wetlands development -- Conservation easement.

(1) For purposes of this section:

(a) "Corrections" means the Department of Corrections created under Section 64-13-2.

(b) "Critical land" means:

(i) a parcel of approximately 250 acres of land owned by the division and located on the east edge of the Jordan River between about 12300 South and 14600 South in Salt Lake County, approximately the southern half of whose eastern boundary abuts the Denver and Rio Grande Western Railroad right-of-way; and

(ii) any parcel acquired in a transaction authorized under Subsection (3)(c) as a replacement for a portion of the parcel described in Subsection (1)(b)(i) that is conveyed as part of the transaction.

(c) (i) "Open land" means land that is:

(A) preserved in or restored to a predominantly natural, open, and undeveloped condition; and

(B) used for:

(I) wildlife habitat;

(II) cultural or recreational use;

(III) watershed protection; or

(IV) another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open, and undeveloped condition.

(ii) (A) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.

(B) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:

(I) enhance the natural, scenic, or aesthetic qualities of the land; or

(II) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.

(2) (a) (i) The critical land shall be preserved in perpetuity as open land.

(ii) The long-term ownership and management of the critical land should eventually be turned over to the Department of Natural Resources created under Section 79-2-201 or another agency or entity that is able to accomplish the purposes and intent of this section.

(b) Notwithstanding Subsection (2)(a)(i) and as funding is available, certain actions should be taken on or with respect to the critical land, including:

(i) the development and implementation of a program to eliminate noxious vegetation and restore and facilitate the return of natural vegetation on the critical land;

(ii) the development of a system of trails through the critical land that is compatible with the preservation of the critical land as open land;

(iii) the development and implementation of a program to restore the natural features of and improve the flows of the Jordan River as it crosses the critical land;

(iv) the preservation of the archeological site discovered on the critical land and the development of an interpretive site in connection with the archeological discovery;

(v) in restoring features on the critical land, the adoption of methods and plans that will enhance the critical land's function as a wildlife habitat;

(vi) taking measures to reduce safety risks on the critical land; and

(vii) the elimination or rehabilitation of a prison dump site on the critical land.

(3) (a) Except as provided in Subsections (3)(b) and (c), no interest in the critical land may be sold, assigned, leased, or otherwise transferred unless measures are taken to ensure that the critical land that is transferred will be preserved as open land in perpetuity.

(b) Notwithstanding Subsection (3)(a), exchanges of property may be undertaken to resolve boundary disputes with adjacent property owners and easements may be granted for trails and other purposes consistent with Subsection (2)(b) and with the preservation of the critical land as open land.

(c) The Department of Natural Resources may transfer title to a portion of the critical land described in Subsection (1)(b)(i) in exchange for a parcel of land if:

(i) the parcel being acquired is:

(A) open land; and

(B) located within one mile of the portion of critical land being transferred; and

(ii) the purpose of the exchange is to facilitate the development of a commuter rail transit station and associated transit oriented development.

(4) The division shall use the funds remaining from the appropriation under Laws of Utah 1998, Chapter 399, for the purposes of:

- (a) determining the boundaries and legal description of the critical land;
- (b) determining the boundaries and legal description of the adjacent property owned by the division;
- (c) fencing the critical land and adjacent land owned by the division where appropriate and needed; and
- (d) assisting to carry out the intent of this section.

(5) (a) Notwithstanding Subsection (2)(a)(i), the division or its successor in title to the critical land may develop or allow a public agency or private entity to develop more wetlands on the critical land than exist naturally or existed previously.

(b) (i) Subject to Subsections (3)(a) and (5)(b)(ii), the division or its successor in title may transfer jurisdiction of all or a portion of the critical land to a public agency or private entity to provide for the development and management of wetlands and designated wetland buffer areas.

(ii) Before transferring jurisdiction of any part of the critical land under Subsection (5)(b)(i), the division or its successor in title shall assure that reasonable efforts are made to obtain approval from the appropriate federal agency to allow mitigation credits in connection with the critical land to be used for impacts occurring anywhere along the Wasatch Front.

(6) Notwithstanding any other provision of this section, corrections shall have access to the cooling pond located on the critical land as long as that access to and use of the cooling pond are not inconsistent with the preservation of the critical land as open land.

(7) The Department of Corrections, the division, and all other state departments, divisions, or agencies shall cooperate together to carry out the intent of this section.

(8) In order to ensure that the land referred to in this section is preserved as open land, the division shall, as soon as practicable, place the land under a perpetual conservation easement in favor of an independent party such as a reputable land conservation organization or a state or local government agency with experience in conservation easements.

Amended by Chapter 53, 2009 General Session

Amended by Chapter 344, 2009 General Session

63A-5-223. Contracts -- Certain indemnification provisions forbidden.

(1) As used in this section, "design professional" means:

- (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
- (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) Beginning May 12, 2009, a contract, including an amendment to an existing contract, entered into under authority of this chapter may not require that a

design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

(b) Subsection (2)(a) may not be waived by contract.

(c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Enacted by Chapter 217, 2009 General Session

63A-5-224. Authority to transfer land for commuter rail station and related development.

The division may transfer title to a parcel of land it owns in a county of the first class to a public transit district for the purpose of facilitating the development of a commuter rail transit station and associated transit oriented development if:

- (1) the parcel is within one mile of the proposed commuter rail transit station and associated transit oriented development; and
- (2) the division receives in return fair and adequate consideration.

Enacted by Chapter 53, 2009 General Session

63A-5-301. Definitions.

As used in this part:

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" does not include:

- (i) the legislative branch;
- (ii) the judicial branch; and
- (iii) a higher education institution.

(2) "Agency optional term" means an option that is exclusively exercisable by an agency to extend the lease term.

(3) "Director" means director of the Division of Facilities Construction and Management.

(4) "Division" means the Division of Facilities Construction and Management.

(5) "High-cost lease" means a real property lease that:

- (a) has an initial term including any agency optional term of 10 years or more; or
- (b) will require lease payments of more than \$5,000,000 over the term of the lease including any agency optional term.

(6) "Significant lease terms" includes the duration of the lease, the frequency of the periodic payments, renewal clauses, purchase options, cancellation clauses, repair and maintenance clauses, and restrictions on use of the property.

Amended by Chapter 12, 2007 General Session

63A-5-302. Leasing responsibilities of the director.

- (1) The director shall:
 - (a) lease, in the name of the division, all real property space to be occupied by an agency;
 - (b) in leasing space, comply with:
 - (i) Title 63G, Chapter 6a, Utah Procurement Code; and
 - (ii) any legislative mandates contained in the appropriations act or other specific legislation;
 - (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each high-cost lease at least 12 months before it expires;
 - (d) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(e), when appropriate, to evaluate those leases;
 - (e) in evaluating leases:
 - (i) determine whether or not the lease is cost-effective when the needs of the agency to be housed in the leased facilities are considered;
 - (ii) determine whether or not another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
 - (iii) determine whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
 - (iv) compare the proposed lease payments to the current market rates, and evaluate whether or not the proposed lease payments are reasonable under current market conditions;
 - (v) compare proposed significant lease terms to the current market, and recommend whether or not these proposed terms are reasonable under current market conditions; and
 - (vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;
 - (f) based upon the evaluation, include in the report recommendations that identify viable alternatives to:
 - (i) make the lease cost-effective; or
 - (ii) meet the agency's needs when the lease expires; and
 - (g) upon request, provide the information included in the report to:
 - (i) the agency benefitted by the lease; and
 - (ii) the Office of Legislative Fiscal Analyst.
- (2) The director may:
 - (a) subject to legislative appropriation, enter into facility leases with terms of up to 10 years when the length of the lease's term is economically advantageous to the state; and
 - (b) with the approval of the State Building Board and subject to legislative appropriation, enter into facility leases with terms of more than 10 years when the length of the lease's term is economically advantageous to the state.

Amended by Chapter 347, 2012 General Session

63A-5-303. Lease reporting and coordination.

- (1) The director shall:
 - (a) prepare a standard form upon which agencies and other state institutions and entities can report their current and proposed lease activity, including any lease renewals; and
 - (b) develop procedures and mechanisms within the division to:
 - (i) obtain and share information about each agency's real property needs; and
 - (ii) provide oversight and review of lessors and lessees during the term of each lease.
- (2) Each agency, the Judicial Council, and the Board of Regents for each institution of higher education shall report all current and proposed lease activity on the standard form prepared by the division to:
 - (a) the State Building Board; and
 - (b) the Office of Legislative Fiscal Analyst.

Enacted by Chapter 113, 1995 General Session

63A-5-304. Leasing by the Judicial Council and the Administrative Office of the Courts -- Director's responsibilities.

- (1) Before executing any high-cost lease or a modification to a lease that results in a high-cost lease, the Administrative Office of the Courts shall submit a draft of the new lease or modification to:
 - (a) the Judicial Council; and
 - (b) the director of the Division of Facilities Construction and Management.
- (2) The director shall:
 - (a) review the drafts submitted by the Administrative Office of the Courts; and
 - (b) within 30 days after receiving the drafts from the office, submit a report on those drafts to:
 - (i) the Judicial Council; and
 - (ii) the Office of Legislative Fiscal Analyst.
- (3) The report shall contain:
 - (a) the director's opinion about:
 - (i) whether or not the lease or modification is cost-effective when the needs of the entity to be housed in the leased facility are considered;
 - (ii) whether or not another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing; and
 - (iii) whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
 - (b) a comparison of the proposed lease payments to the current market rates, and a recommendation as to whether or not the proposed lease payments are reasonable under current market conditions;
 - (c) a comparison of proposed significant lease terms to the current market, and a recommendation as to whether these proposed terms are reasonable under current market conditions; and
 - (d) a recommendation from the director that the lease or modification to a lease be approved or disapproved.

(4) (a) The Administrative Office of the Courts may not execute any new high-cost leases or modifications to any existing lease that will result in a high-cost lease unless that lease or those modifications are approved by a majority vote of the Judicial Council.

(b) The Judicial Council shall consider the recommendations of the director of the division in determining whether or not to approve high-cost leases and modifications resulting in high-cost leases.

Enacted by Chapter 113, 1995 General Session

63A-5-305. Leasing by higher education institutions.

(1) The Board of Regents shall establish written policies and procedures governing leasing by higher education institutions.

(2) Except as provided in Section 53B-2a-113, each higher education institution shall comply with the procedures and requirements of the Board of Regents' policies before signing or renewing any lease.

Amended by Chapter 289, 2003 General Session

63A-5-306. Leasing of state fair park -- Lease -- Terms -- Demolition of facilities -- Limits on debt or obligations.

(1) As used in this section:

(a) "Corporation" means the Utah State Fair Corporation created in Section 63H-6-103.

(b) "Division" means the Division of Facilities Construction and Management.

(c) "State fair park" means the property and buildings owned by the state located at 155 North 1000 West, Salt Lake City, Utah.

(2) The division:

(a) may lease the state fair park to the corporation for a period not to exceed 50 years:

(i) subject to the corporation satisfying the requirements of Subsection (5)(b)(i); and

(ii) except that on June 30, 2017, that portion of the state fair park known as the White Ball Field located on the south side of North Temple Street shall revert to the division and not be a part of any continuing lease agreement between the division and the corporation, unless otherwise agreed upon by the division and the corporation prior to June 30, 2017;

(b) shall ensure that any lease entered into under Subsection (2)(a):

(i) defines which party is responsible for repairs and maintenance to the grounds and buildings;

(ii) defines any restrictions on the use of the property or buildings, including the construction of any new buildings or facilities at the state fair park;

(iii) requires that for each year under the lease the corporation holds a state fair meeting the requirements of Subsection 63H-6-103(5)(a)(vi); and

(iv) provides for the renegotiation or termination of the lease if the corporation:

(A) no longer operates as an independent public nonprofit corporation as provided in Title 63H, Chapter 6, Utah State Fair Corporation Act; or

(B) engages in any activity inconsistent with Title 63H, Chapter 6, Utah State Fair Corporation Act;

(c) may:

(i) require that any lease entered into under Subsection (2)(a) grants the division the right to unilaterally terminate the lease at its discretion; and

(ii) provide a process to determine compensation, if any, the division shall pay the corporation for termination of the lease under Subsection (2)(c)(i); and

(d) if the lease described in Subsection (2)(a) is amended or renewed after the effective date of this act and except as provided in Subsection (3), shall require the corporation under the lease to:

(i) obtain the approval of the State Building Board before demolishing a facility at the state fair park; and

(ii) include the approval requirement described in Subsection (2)(d)(i) in any sublease entered into, renewed, or amended after the effective date of this act.

(3) (a) The approval required under Subsection (2)(d) does not apply to a facility demolished in accordance with a contract entered into but not amended before the effective date of this act.

(b) Notwithstanding Subsection (3)(a), before a facility described in Subsection (3)(a) is demolished, the corporation shall notify the division concerning any demolishing of the facility.

(4) The State Building Board shall notify the state historic preservation office of any State Building Board meeting at which consideration will be given to a proposal to demolish facilities at the state fair park.

(5) (a) Notwithstanding Subsection (2), the division may review and adjust the amount of any payments made by the corporation under the lease every three years beginning July 1, 2000.

(b) (i) The division may lease the state fair park to the corporation for a period not to exceed 50 years, if the corporation demonstrates to the satisfaction of the division that the lease period will result in significant capital improvements at the state fair park by a private or public entity.

(ii) The corporation may enter into a sublease of up to 50 years, subject to satisfying the requirements of Subsections (2)(d)(i) and (5)(b)(i).

(6) The state shall assume the responsibilities of the corporation under any contract that is in effect on the day a lease between the division and the corporation terminates if:

(a) the contract is for the lease or construction of a building or facility at the state park; and

(b) the lease between the division and the corporation is terminated in accordance with Subsection (2)(b)(iv).

(7) (a) Payments made by the corporation under a lease with the division shall be deposited into the Capital Project Fund.

(b) If, in accordance with Subsection (5), the payments made by the corporation under a lease with the division are increased from the amount paid on July 1, 1997, the

lease payments made by the division shall be dedicated to capital improvements at the state fair park unless, as part of the capital budget, the Legislature directs that the money be used for other capital improvements.

(8) (a) A debt or obligation contracted by the corporation is a debt or obligation of the corporation.

(b) The state is not liable for and assumes no legal or moral responsibility for any debt or obligation described in Subsection (8)(a), unless the Legislature through statute or an appropriation act specifically:

- (i) authorizes the corporation to contract for that debt or obligation; and
- (ii) accepts liability for or assumes responsibility for the debt or obligation.

Amended by Chapter 370, 2011 General Session

63A-5-401. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the division buys, sells, or exchanges real property, the division shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

- (a) shall establish procedures for determining the value of the real property;
- (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates the real property's value; and
- (c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

- (a) that is under a contract or other written agreement before May 5, 2008; or
- (b) with a value of less than \$100,000, as estimated by the state agency.

Amended by Chapter 289, 2011 General Session

63A-5-501. Making keys to buildings of state, political subdivisions or colleges and universities without permission prohibited.

No person shall knowingly make or cause to be made any key or duplicate key for any building, laboratory, facility, room, dormitory, hall or any other structure or part thereof owned by the state, by any political subdivision thereof or by the board of regents or other governing body of any college or university which is supported wholly or in part by the state without the prior written consent of the state, political subdivision, board of regents, or other governing body.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-5-502. Violation -- Misdemeanor.

Any person who violates this act shall be guilty of a misdemeanor.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-5-601. Legislative findings and policy.

- (1) The Legislature finds the following:
 - (a) The operation of facilities owned and controlled by the state consumes significant amounts of energy.
 - (b) Facilities owned and controlled by the state present a significant opportunity for energy cost savings through the implementation of conservation measures.
 - (c) Principles which produce efficient facility management in the private sector are equally applicable to the management of public buildings and facilities.
 - (d) There exists, in the private sector, favorable alternative methods of financing energy conservation measures which are not readily adaptable to financing state facility energy efficiency improvements due to current budgetary practices.
 - (e) Maximization of energy conservation efforts in light of limited resources requires careful advance planning by responsible agencies.
- (2) The Legislature declares that it is the policy of the state to:
 - (a) undertake aggressive programs designed to reduce energy use in state facilities in order to reduce the operating costs of state government and to set an example of energy efficiency for the public;
 - (b) utilize, to the greatest practical extent, alternative funding sources and methods of financing energy efficiency improvements in state facilities in a manner which minimizes the necessity for increased appropriations;
 - (c) employ private sector management incentive principles, to the extent practicable, to implement the policies in Subsections (2)(a) and (b);
 - (d) develop incentives to encourage state entities to conserve energy, reduce energy costs, and utilize renewable energy sources where practicable; and
 - (e) procure and use energy efficient products where practicable.

Renumbered and Amended by Chapter 334, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63A-5-602. Appropriation for energy efficiency measures.

- (1) For purposes of this part:
 - (a) "Energy efficiency measures" is as defined in Section 63A-5-701.
 - (b) "Energy savings" means money not expended by a state agency as the result of energy efficiency measures.
 - (c) "State agency" is as defined in Section 63A-5-701.
- (2) Except as provided under Subsection (4) and subject to future budget constraints, the Legislature may not remove energy savings from a state agency's appropriation.
- (3) A state agency shall use energy savings to:
 - (a) fund the cost of the energy efficiency measures; and
 - (b) if funds are available after meeting the requirements of Subsection (3)(a), fund and implement new energy efficiency measures.

(4) The Legislature may remove energy savings if:
(a) a state agency has complied with Subsection (3)(a); and
(b) no cost effective new energy efficiency measure is available for implementation.

(5) A state agency may consult with the State Building Energy Efficiency Program manager in the Division of Facilities and Construction Management regarding:
(a) the cost effectiveness of energy efficiency measures; and
(b) ways to measure energy savings that take into account fluctuations in energy costs and temperature.

Enacted by Chapter 334, 2008 General Session

63A-5-603. State Facility Energy Efficiency Fund -- Contents -- Use of fund money.

(1) As used in this section:
(a) "Board" means the State Building Board.
(b) "Division" means the Division of Facilities Construction and Management.
(c) "Fund" means the State Facility Energy Efficiency Fund created by this section.

(2) There is created a revolving loan fund known as the "State Facility Energy Efficiency Fund."

(3) To capitalize the fund, the Division of Finance shall, at the end of fiscal year 2007-08, transfer \$3,650,000 from the Stripper Well-Petroleum Violation Escrow Fund to the fund.

(4) The fund shall consist of:
(a) money transferred under Subsection (3);
(b) money appropriated by the Legislature;
(c) money received for the repayment of loans made from the fund; and
(d) interest earned on the fund.

(5) The board shall make a loan from the fund to a state agency to, wholly or in part, finance energy efficiency measures.

(6) (a) (i) A state agency requesting a loan shall submit an application to the board in the form and containing the information that the board requires, including plans and specifications for the proposed energy efficiency measures.

(ii) A state agency may request a loan to fund all or part of the cost of energy efficiency measures.

(b) If the board rejects the application, the board shall notify the applicant stating the reasons for the rejection.

(7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing criteria to determine:

(i) loan eligibility;
(ii) energy efficiency measures priority; and
(iii) ways to measure energy savings that take into account fluctuations in energy costs and temperature.

(b) In making rules that establish prioritization criteria for energy efficiency

measures, the board may consider:

- (i) possible additional sources of revenue;
- (ii) the feasibility and practicality of the energy efficiency measures;
- (iii) the energy savings attributable to eligible energy efficiency measures;
- (iv) the annual energy savings;
- (v) the projected energy cost payback of eligible energy efficiency measures;
- (vi) other benefits to the state attributable to eligible energy efficiency

measures;

- (vii) the availability of federal funds for the energy efficiency measures; and

(viii) whether to require a state agency to provide matching funds for the energy efficiency measures.

(8) (a) In reviewing energy efficiency measures for possible funding, the board shall:

(i) review the loan application and the plans and specifications for the energy efficiency measures;

(ii) determine whether to grant the loan by applying the loan eligibility criteria; and

(iii) if the loan is granted, prioritize funding of the energy efficiency measures by applying the prioritization criteria.

(b) The board may condition approval of a loan application and the availability of funds on assurances from the state agency that the board considers necessary to ensure that the state agency:

- (i) uses the proceeds to pay the cost of the energy efficiency measures; and

- (ii) implements the energy efficiency measures.

(9) The State Building Energy Efficiency Program shall provide staff support when the board performs the duties established in this section.

Enacted by Chapter 334, 2008 General Session

63A-5-701. State Building Energy Efficiency Program.

(1) For purposes of this section:

(a) "Division" means the Division of Facilities Construction and Management established in Section 63A-5-201.

(b) "Energy efficiency measures" means actions taken or initiated by a state agency that reduce the state agency's energy use, increase the state agency's energy efficiency, reduce source energy consumption, reduce water consumption, or lower the costs of energy or water to the state agency.

(c) "Energy savings agreement" means an agreement entered into by a state agency whereby the state agency implements energy efficiency measures and finances the costs associated with implementation of energy efficiency measures using the stream of expected savings in utility costs resulting from implementation of the energy efficiency measures as the funding source for repayment.

(d) "State agency" means each executive, legislative, and judicial branch department, agency, board, commission, or division, and includes a state institution of higher education as defined in Section 53B-3-102.

(e) "State Building Energy Efficiency Program" means a program established under this section for the purpose of improving energy efficiency measures and reducing the energy costs for state facilities.

(f) (i) "State facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education.

(ii) "State facility" does not mean:

(A) an unoccupied structure that is a component of the state highway system;

(B) a privately owned structure that is located on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education; or

(C) a structure that is located on land administered by the School and Institutional Trust Lands Administration under a lease, permit, or contract with the School and Institutional Trust Lands Administration.

(2) The division shall:

(a) develop and administer the state building energy efficiency program, which shall include guidelines and procedures to improve energy efficiency in the maintenance and management of state facilities;

(b) provide information and assistance to state agencies in their efforts to improve energy efficiency;

(c) analyze energy consumption by state agencies to identify opportunities for improved energy efficiency;

(d) establish an advisory group composed of representatives of state agencies to provide information and assistance in the development and implementation of the state building energy efficiency program; and

(e) submit to the governor and to the Infrastructure and General Government Appropriations Subcommittee of the Legislature an annual report that:

(i) identifies strategies for long-term improvement in energy efficiency;

(ii) identifies goals for energy conservation for the upcoming year; and

(iii) details energy management programs and strategies that were undertaken in the previous year to improve the energy efficiency of state agencies and the energy savings achieved.

(3) Each state agency shall:

(a) designate a staff member that is responsible for coordinating energy efficiency efforts within the agency;

(b) provide energy consumption and costs information to the division;

(c) develop strategies for improving energy efficiency and reducing energy costs; and

(d) provide the division with information regarding the agency's energy efficiency and reduction strategies.

(4) (a) A state agency may enter into an energy savings agreement for a term of up to 20 years.

(b) Before entering into an energy savings agreement, the state agency shall:

(i) utilize the division to oversee the project unless the project is exempt from the division's oversight or the oversight is delegated to the agency under the provisions

of Section 63A-5-206;

- (ii) obtain the prior approval of the governor or the governor's designee; and
- (iii) provide the Office of Legislative Fiscal Analyst with a copy of the proposed agreement before the agency enters into the agreement.

Amended by Chapter 242, 2012 General Session

63A-5-801. Memorials by the state or state agencies.

(1) As used in this section:

(a) "State agency" means any of the following of the state that holds title to state land:

- (i) a department;
- (ii) a division;
- (iii) a board;
- (iv) an institution of higher education; or
- (v) for the judicial branch, the state court administrator.

(b) "State agency" does not mean a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Utah Special Service District Act.

(2) The Legislature, the governor, or a state agency may authorize the use or donation of state land for the purpose of maintaining, erecting, or contributing to the erection or maintenance of a memorial to commemorate those individuals who have:

- (a) participated in or have given their lives in any of the one or more wars or military conflicts in which the United States of America has been a participant; or
- (b) given their lives in association with public service on behalf of the state, including firefighters, peace officers, highway patrol officers, or other public servants.

(3) The use or donation of state land in relation to a memorial described in Subsection (2) may include:

- (a) using or appropriating public funds for the purchase, development, improvement, or maintenance of state land on which a memorial is located or established;
- (b) using or appropriating public funds for the erection, improvement, or maintenance of a memorial;
- (c) donating or selling state land for use in relation to a memorial; or
- (d) authorizing the use of state land for a memorial that is funded or maintained in part or in full by another public or private entity.

(4) The Legislature, the governor, or a state agency may specify the form, placement, and design of a memorial that is subject to this section if the Legislature, the governor, or the state agency holds title to, has authority over, or donates the land on which a memorial is established.

(5) Memorials within the definition of a capital development as defined in Section 63A-5-104 must be approved as provided for in Section 63A-5-104.

(6) Nothing in this section shall be construed as a prohibition of memorials, including those for purposes not covered by this section, which have been erected within the approval requirements in effect at the time of their erection or which may be

duly authorized through other legal means.

Amended by Chapter 360, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63A-9-101. Definitions.

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" includes the State Board of Education, the Office of Education, each Applied Technology Center, the board of regents, the institutional councils of each higher education institution, and each higher education institution.

(c) "Agency" includes the legislative and judicial branches.

(2) "Committee" means the Motor Vehicle Review Committee created by this chapter.

(3) "Director" means the director of the division.

(4) "Division" means the Division of Fleet Operations created by this chapter.

(5) "Executive director" means the executive director of the Department of Administrative Services.

(6) "Local agency" means:

(a) a county;

(b) a municipality;

(c) a school district;

(d) a local district;

(e) a special service district;

(f) an interlocal entity as defined under Section 11-13-103; or

(g) any other political subdivision of the state, including a local commission, board, or other governmental entity that is vested with the authority to make decisions regarding the public's business.

(7) (a) "Motor vehicle" means a self-propelled vehicle capable of carrying passengers.

(b) "Motor vehicle" includes vehicles used for construction and other nontransportation purposes.

(8) "State vehicle" means each motor vehicle owned, operated, or in the possession of an agency.

Amended by Chapter 65, 2008 General Session

63A-9-201. Creation.

(1) There is created the Division of Fleet Operations within the Department of Administrative Services.

(2) The division of fleet operations is an internal service fund agency and its financial affairs shall be accounted for as an internal service fund.

Enacted by Chapter 334, 1996 General Session

63A-9-202. Director of division -- Appointment.

The executive director of the department shall appoint the director of the Division of Fleet Operations with the approval of the governor.

Enacted by Chapter 334, 1996 General Session

63A-9-203. Director -- Duties.

The director shall establish and administer the division.

Enacted by Chapter 334, 1996 General Session

63A-9-301. Motor Vehicle Review Committee -- Composition.

- (1) There is created a Motor Vehicle Review Committee to advise the division.
- (2) The committee shall be composed of nine members as follows:
 - (a) the executive director of the Department of Administrative Services or the director's designee;
 - (b) a member from a state agency other than higher education, the Department of Transportation, the Department of Public Safety, or the Department of Natural Resources, who uses the division's services;
 - (c) the director of the Division of Purchasing and General Services or the director's designee;
 - (d) one member from:
 - (i) higher education, designated annually by the executive director of the Department of Administrative Services;
 - (ii) the Department of Transportation, designated annually by the executive director of the Department of Administrative Services;
 - (iii) the Department of Public Safety, designated annually by the executive director of the Department of Administrative Services; and
 - (iv) the Department of Natural Resources, designated annually by the executive director of the Department of Administrative Services; and
 - (e) two public members with experience in fleet operations and maintenance appointed by the governor.
- (3) (a) Except as required by Subsection (3)(b), the governor shall appoint each public member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of public members are staggered so that one of the public members is appointed every two years.
 - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(5) Five members of the committee are a quorum.

(6) The executive director of the Department of Administrative Services is chair of the committee.

Amended by Chapter 286, 2010 General Session

63A-9-302. Committee duties.

The committee shall:

(1) advise the director about carrying out the director's responsibilities under this chapter;

(2) review each administrative rule proposed by the division and make recommendations to the director about those rules; and

(3) in conjunction with the director, make recommendations to the legislature about any amendments to statute needed to allow the division to fulfill its responsibilities under this chapter.

Amended by Chapter 5, 2003 General Session

63A-9-401. Division -- Duties.

(1) The division shall:

(a) perform all administrative duties and functions related to management of state vehicles;

(b) coordinate all purchases of state vehicles;

(c) establish one or more fleet automation and information systems for state vehicles;

(d) make rules establishing requirements for:

(i) maintenance operations for state vehicles;

(ii) use requirements for state vehicles;

(iii) fleet safety and loss prevention programs;

(iv) preventative maintenance programs;

(v) procurement of state vehicles, including:

(A) vehicle standards;

(B) alternative fuel vehicle requirements;

(C) short-term lease programs;

(D) equipment installation; and

(E) warranty recovery programs;

(vi) fuel management programs;

(vii) cost management programs;

(viii) business and personal use practices, including commute standards;

(ix) cost recovery and billing procedures;

(x) disposal of state vehicles;

(xi) reassignment of state vehicles and reallocation of vehicles throughout the fleet;

(xii) standard use and rate structures for state vehicles; and

- (xiii) insurance and risk management requirements;
- (e) establish a parts inventory;
- (f) create and administer a fuel dispensing services program that meets the requirements of Subsection (2);
- (g) emphasize customer service when dealing with agencies and agency employees;
- (h) conduct an annual audit of all state vehicles for compliance with division requirements;
- (i) before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency:
 - (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established in Section 63A-1-114; and
 - (ii) obtain the approval of the Legislature as required by Section 63J-1-410; and
 - (j) conduct an annual market analysis of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available.
- (2) The division shall operate a fuel dispensing services program in a manner that:
 - (a) reduces the risk of environmental damage and subsequent liability for leaks involving state-owned underground storage tanks;
 - (b) eliminates fuel site duplication and reduces overall costs associated with fuel dispensing;
 - (c) provides efficient fuel management and efficient and accurate accounting of fuel-related expenses;
 - (d) where practicable, privatizes portions of the state's fuel dispensing system;
 - (e) provides central planning for fuel contingencies;
 - (f) establishes fuel dispensing sites that meet geographical distribution needs and that reflect usage patterns;
 - (g) where practicable, uses alternative sources of energy; and
 - (h) provides safe, accessible fuel supplies in an emergency.
- (3) The division shall:
 - (a) ensure that the state and each of its agencies comply with state and federal law and state and federal rules and regulations governing underground storage tanks;
 - (b) coordinate the installation of new state-owned underground storage tanks and the upgrading or retrofitting of existing underground storage tanks; and
 - (c) ensure that counties, municipalities, school districts, local districts, and special service districts subscribing to services provided by the division sign a contract that:
 - (i) establishes the duties and responsibilities of the parties;
 - (ii) establishes the cost for the services; and
 - (iii) defines the liability of the parties.
- (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director of the Division of Fleet Operations:
 - (i) may make rules governing fuel dispensing; and

(ii) shall make rules establishing standards and procedures for purchasing the most economically appropriate size and type of vehicle for the purposes and driving conditions for which the vehicle will be used, including procedures for granting exceptions to the standards by the executive director of the Department of Administrative Services.

(b) Rules made under Subsection (4)(a)(ii):

(i) shall designate a standard vehicle size and type that shall be designated as the statewide standard vehicle for fleet expansion and vehicle replacement;

(ii) may designate different standard vehicle size and types based on defined categories of vehicle use;

(iii) may, when determining a standard vehicle size and type for a specific category of vehicle use, consider the following factors affecting the vehicle class:

(A) size requirements;

(B) economic savings;

(C) fuel efficiency;

(D) driving and use requirements;

(E) safety;

(F) maintenance requirements;

(G) resale value; and

(H) the requirements of Section 63A-9-403; and

(iv) shall require agencies that request a vehicle size and type that is different from the standard vehicle size and type to:

(A) submit a written request for a nonstandard vehicle to the division that contains the following:

(I) the make and model of the vehicle requested, including acceptable alternate vehicle makes and models as applicable;

(II) the reasons justifying the need for a nonstandard vehicle size or type;

(III) the date of the request; and

(IV) the name and signature of the person making the request; and

(B) obtain the division's written approval for the nonstandard vehicle.

(5) (a) (i) Each state agency and each higher education institution shall subscribe to the fuel dispensing services provided by the division.

(ii) A state agency may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by the division.

(b) Counties, municipalities, school districts, local districts, special service districts, and federal agencies may subscribe to the fuel dispensing services provided by the division if:

(i) the county or municipal legislative body, the school district, or the local district or special service district board recommends that the county, municipality, school district, local district, or special service district subscribe to the fuel dispensing services of the division; and

(ii) the division approves participation in the program by that government unit.

(6) The director, with the approval of the executive director, may delegate functions to institutions of higher education, by contract or other means authorized by law, if:

- (a) the agency or institution of higher education has requested the authority;
- (b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities; and
- (c) the delegation of authority is in the best interest of the state and the function delegated is accomplished according to provisions contained in law or rule.

Amended by Chapter 190, 2014 General Session

**63A-9-401.5. Vehicle fleet cost efficiency plans -- Requirements --
Contents -- Submission by agencies.**

(1) The division shall develop and coordinate the implementation of a statewide vehicle fleet cost efficiency plan to ensure continuing progress toward statewide overall cost reduction in government vehicle costs. The plan shall include:

- (a) goals for vehicle fleet cost efficiency;
 - (b) a summary of agency submitted plans, statistics, and progress;
 - (c) standard measures of cost including:
 - (i) vehicle cost per mile;
 - (ii) total vehicles;
 - (iii) total fuel used; and
 - (iv) miles per gallon of fuel;
 - (d) goals for purchasing the most economically appropriate size and type of vehicle for the purposes and driving conditions for which the vehicle will be used;
 - (e) cost reduction measures which may include:
 - (i) reducing vehicle engine idle time;
 - (ii) driving fewer miles;
 - (iii) using car pools when possible;
 - (iv) avoiding rush hour traffic;
 - (v) reducing aggressive driving;
 - (vi) providing proper preventative maintenance including properly inflated tires;
- and
- (vii) purchasing from state fuel sites and using the lowest octane fuel needed for the altitude;
 - (f) reducing inventories of underutilized vehicles; and
 - (g) education to inform drivers of their accountability on implementing cost reduction measures.

(2) The division shall assist agencies to develop and implement their own plans in accordance with this part.

(3) Each agency that owns or leases vehicles shall develop, implement, and submit to the division under Section 63A-9-402, a vehicle fleet cost efficiency plan for their agency in accordance with the provisions under Subsection (1). The plan shall include agency goals and statistics, and a report of agency progress.

Enacted by Chapter 106, 2007 General Session

63A-9-402. State-owned vehicle report -- Contents.

(1) On or before October 1 of each year, each agency that owns or leases vehicles shall submit a report to the division that contains at least the following information:

(a) a description of each vehicle owned or leased by that agency, including the license number, year, make, and model of the vehicle;

(b) the person and administrative unit within the agency to whom each vehicle is assigned; and

(c) a vehicle fleet cost efficiency plan in accordance with the provisions of Section 63A-9-401.5.

(2) (a) On or before November 1 of each calendar year, the director of the division shall submit a state-owned vehicle report to the governor and to the legislative fiscal analyst.

(b) The report shall contain a summary of vehicles owned or leased by each state agency including:

(i) a description of each vehicle owned or leased by each agency;

(ii) the person or administrative unit within the agency to whom each vehicle is assigned; and

(iii) standard measures of cost for the previous year, for each vehicle, including:

(A) vehicle cost per mile;

(B) total vehicles;

(C) total fuel used; and

(D) miles per gallon of fuel.

(3) The legislative fiscal analyst shall submit the information from the state-owned vehicle report about each agency's state-owned vehicles to the legislative appropriation subcommittee that has jurisdiction over that agency.

(4) (a) Vehicles used in official investigative work where secrecy is essential are exempt from the requirements of this section.

(b) The report to the governor and legislative fiscal analyst shall include the total number of state vehicles used in official investigative work where secrecy is essential that are not otherwise accounted for in the report.

Amended by Chapter 106, 2007 General Session

63A-9-403. Clean emissions vehicles -- Alternative fuel vehicles.

No later than August 30, 2018, the division shall ensure that 50% or more of new or replacement division-owned state vehicles that are motor vehicles used for the transportation of passengers are motor vehicles with emissions that are equal to or cleaner than the standards established in bin 2 in Table S04-1, of 40 C.F.R.

86.1811-04(c)(6), or any vehicle propelled to a significant extent using one of the following alternative fuels:

(1) electricity from an off-board source;

(2) natural gas;

(3) liquid petroleum gas;

(4) hydrogen; or

(5) biodiesel.

Enacted by Chapter 190, 2014 General Session

63A-9-501. Complaints about misuse or illegal operation of state vehicles
-- Disposition.

(1) The division shall refer complaints from the public about misuse or illegal operation of state vehicles to the agency that is the owner or lessor of the vehicle.

(2) Each agency head or his designee shall investigate all complaints about misuse or illegal operation of state vehicles and shall discipline each employee that is found to have misused or illegally operated a vehicle by following the procedures set forth in the rules adopted by the Department of Human Resource Management as authorized by Section 67-19-18.

(3) (a) Each agency shall report the findings of each investigation conducted as well as any action taken as a result of the investigation to the directors of the Divisions of Fleet Operations and Risk Management.

(b) Misuse or illegal operation of state vehicles may result in suspension or revocation of state vehicle driving privileges as governed in rule.

Amended by Chapter 139, 2006 General Session

63A-9-601. Marking of vehicles.

(1) (a) Except as provided in Subsection (5), all motor vehicles owned, leased for use, or operated by the state shall display an identification mark and "EX" plates where required by Section 41-1a-407.

(b) The division is responsible for ensuring that vehicles owned or leased by the state are marked.

(c) The division shall enact rules relating to the size and design of the identification mark.

(2) The identification mark shall be clear, distinct, and kept free from defacement, mutilation, grease, and other obscuring matter so that it is plainly visible at all times.

(3) Each person operating a state vehicle without the proper designation is guilty of an infraction.

(4) Vehicles used in official investigative work where secrecy is essential are exempt from the requirements of this section.

(5) Notwithstanding Subsection (1), the division may grant security exemptions to the identification mark and "EX" plate requirement when the division:

(a) receives a request for an exemption; and

(b) determines there is a substantial danger to the person to whom the vehicle is assigned if the vehicle is identified as a state vehicle.

Enacted by Chapter 334, 1996 General Session

63A-9-701. Subscription to motor pool by certain local government entities.

(1) The following local government entities may subscribe to the central motor pool service provided by the division subject to the conditions established in Subsection (2):

(a) local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act;

(b) local substance abuse authorities as defined in Section 17-43-201;

(c) local area agencies, as authorized by Section 62A-3-104, or their subcontractors who are local governmental or public entities; and

(d) local mental health authorities as defined in Section 17-43-301.

(2) The local government entities outlined in Subsection (1) may subscribe to the central motor pool service provided by the division only if:

(a) the director of the local government entity determines it will result in substantial cost savings or increased efficiency to the local government entity; and

(b) the central motor pool has sufficient vehicles available.

Amended by Chapter 22, 2003 General Session

63A-9-702. Authority of public to purchase natural gas from the state fuel network -- Rulemaking authority.

(1) As used in this section, "private individual or entity" means any individual or entity that:

(a) is not acting under the authority of a federal, state, or local government agency; and

(b) is not purchasing compressed natural gas from the state's fuel network for sale, resale, distribution, redistribution, trade, exchange, or in furtherance of a commercial enterprise.

(2) The division may allow a private individual or entity to purchase compressed natural gas from the state's fuel network if:

(a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs of private individuals or entities; and

(b) there is no emergency that, as determined by the division, warrants the holding of compressed natural gas in reserve for use by state or emergency vehicles.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(a) giving state and local agencies priority to dispense and receive compressed natural gas from the state's fuel network sites;

(b) designating state fuel network sites that may be made available to private individuals and entities for the purchase of compressed natural gas;

(c) defining the terms of operation for each site designated under Subsection (3)(b);

(d) unless otherwise prohibited by law, limiting the amount of compressed natural gas that may be purchased from the state's fuel network by any private individual or entity at any one time, or in the aggregate during any given period of time;

(e) providing conditions upon which a private individual or entity's authorization to purchase compressed natural gas from the state fuel network may be granted,

revoked, or suspended under this section;

- (f) to establish or determine compliance with Subsections (2)(a) and (b); and
- (g) defining the term "geographical compressed natural gas needs of a private individual or entity."

Enacted by Chapter 65, 2008 General Session

63A-11-101. Title.

This chapter is known as the "Child Welfare Parental Defense Program."

Amended by Chapter 265, 2011 General Session

63A-11-102. Definitions.

For purposes of this chapter:

(1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings or Part 5, Termination of Parental Rights Act.

(2) "Contracted parental defense attorney" means a parental defense attorney who is under contract with the department to provide parental defense in child welfare cases.

(3) "Fund" means the Child Welfare Parental Defense Fund established in Section 63A-11-203.

(4) "Parental defense attorney" means an attorney, law firm, or group of attorneys who:

- (a) are authorized to practice law in Utah; and
- (b) provide legal representation under contract with the department, or a county in the state, to a parent who is a party in a child welfare case.

(5) "Program" means the Child Welfare Parental Defense Program created in Section 63A-11-103.

Amended by Chapter 265, 2011 General Session

63A-11-103. Creation of program.

There is created within the department, the Child Welfare Parental Defense Program.

Amended by Chapter 265, 2011 General Session

63A-11-104. Program -- Duties -- Contracting.

- (1) The department shall:
 - (a) except as provided under Subsection (2), administer and enforce this chapter;
 - (b) manage the operation and budget of the program; and
 - (c) if the department operates the program as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in

Section 63A-1-114:

- (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - (ii) other information or analysis requested by the Rate Committee.
- (2) The department may contract with:
- (a) a qualified person to perform the program duties assigned by this chapter;
- and
- (b) an attorney authorized to practice law in the state, as an independent contractor, to serve as a parental defense attorney as provided under Section 63A-11-201.

Amended by Chapter 265, 2011 General Session

63A-11-105. Program -- Duties, functions, and responsibilities.

The department shall:

- (1) provide assistance and advice to parental defense attorneys;
- (2) develop and provide educational and training programs for parental defense attorneys; and
- (3) provide information and advice to assist parental defense attorneys to comply with their professional, contractual, and ethical duties.

Amended by Chapter 265, 2011 General Session

63A-11-106. Annual report -- Budget.

- (1) On or before the 1st day of October each year, the executive director shall report to the governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the preceding fiscal year on the operations, activities, and goals of the program.
- (2) The executive director shall prepare a budget of:
 - (a) the administrative expenses for the program; and
 - (b) the amount estimated to fund needed contracts and other costs.

Amended by Chapter 265, 2011 General Session

63A-11-107. Records access.

- (1) (a) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (1)(b), all records of a contracted parental defense attorney are protected and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.
- (b) All records of a contracted parental defense attorney are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.
- (2) Records released in accordance with Subsection (1)(b) shall be maintained as confidential by the Legislature. The professional legislative staff may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

Amended by Chapter 382, 2008 General Session

63A-11-201. Child welfare parental defense contracts -- Qualifications.

(1) The department may enter into contracts with qualified parental defense attorneys to provide services for an indigent parent or parents who are the subject of a petition alleging abuse, neglect, or dependency, and will require a parental defense attorney under Section 78A-6-1111.

(2) Payment for the representation, costs, and expenses of a contracted parental defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-203.

(3) The parental defense attorney shall maintain the minimum qualifications as provided by this chapter.

Amended by Chapter 265, 2011 General Session

63A-11-202. Contracted parental defense attorney.

(1) For child welfare cases, a contracted parental defense attorney shall:

(a) adequately prepare for and attend all court hearings, including initial and continued shelter hearings and mediations;

(b) fully advise the client of the nature of the proceedings and of the client's rights, communicate to the client any offers of settlement or compromise, and advise the client regarding the reasonably foreseeable consequences of any course of action in the proceedings;

(c) be reasonably available to consult with the client outside of court proceedings;

(d) where attendance of a parental defense attorney is reasonably needed, attend meetings regarding the client's case with representatives of one or more of the Division of Child and Family Services, the Office of the Attorney General, and the Office of Guardian Ad Litem;

(e) represent the interest of the client at all stages of the proceedings before the trial court; and

(f) participate in the training courses and otherwise maintain the standards described in Subsection (3).

(2) If the department enters into a contract with an attorney under Section 63A-11-201, the contract shall require that each attorney in the firm who will provide representation of parents in child welfare cases under the contract perform the duties described in Subsection (1).

(3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense attorney shall meet the standards developed by the department, which may include:

(i) completion of a basic training course provided by the program;

(ii) experience in child welfare cases; and

(iii) participation each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, the department may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has equivalent training or adequate experience.

(4) Payment for the representation, costs, and expenses of the contracted parental defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-203.

Amended by Chapter 265, 2011 General Session

63A-11-203. Child Welfare Parental Defense Fund -- Creation.

(1) There is created an expendable special revenue fund known as the "Child Welfare Parental Defense Fund."

(2) Subject to availability, the department may make distributions from the fund as required in this chapter for the following purposes:

(a) to pay for the representation, costs, expert witness fees, and expenses of contracted parental defense attorneys who are under contract with the department to provide parental defense in child welfare cases for the indigent parent or parents that are the subject of a petition alleging abuse, neglect, or dependency;

(b) for administrative costs under this chapter; and

(c) for reasonable expenses directly related to the functioning of the program, including training and travel expenses.

(3) The fund consists of:

(a) appropriations made to the fund by the Legislature;

(b) interest and earnings from the investment of fund money;

(c) proceeds deposited by participating counties under Section 63A-11-204; and

(d) private contributions to the Child Welfare Parental Defense Fund.

(4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(5) (a) If the department anticipates a deficit in the fund during any fiscal year:

(i) the department shall request an appropriation from the Legislature; and

(ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the deficit.

(b) If the anticipated deficit is not funded by the Legislature, the department may request an interim assessment to participating counties to fund the anticipated deficit.

Amended by Chapter 400, 2013 General Session

63A-11-204. Agreements for coverage by the Child Welfare Parental Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.

(1) A county legislative body and the department may annually enter into a written agreement for the department to provide parental defense attorney services in the county out of the Child Welfare Parental Defense Fund.

(2) An agreement described in Subsection (1) shall provide that the county shall pay into the fund an amount defined by a formula established in rule by the department.

(3) (a) After the first year of operation of the fund, any county that elects to

initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2).

(b) The amount of the equity payment described in Subsection (3)(a) shall be determined by the department under rules established by the department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The agreement shall provide for revocation of the agreement for failure to pay assessments on the due date established by rule.

(5) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county or coverage from the fund.

Amended by Chapter 265, 2011 General Session

63A-12-100. Title.

This chapter is known as the "Public Records Management Act."

Amended by Chapter 258, 2010 General Session

63A-12-100.5. Definitions.

(1) Except as provided under Subsection (2), the definitions in Section 63G-2-103 apply to this chapter.

(2) As used in this chapter, "division" or "state archives" means the Division of Archives and Records Service.

Amended by Chapter 265, 2011 General Session

63A-12-101. Division of Archives and Records Service created -- Duties.

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value

to warrant further retention;

(f) establish, maintain, and operate centralized microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the records committee;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(i) provide access to public records deposited in the archives;

(j) administer and maintain the Utah Public Notice Website established under Section 63F-1-701;

(k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(l) prepare forms for use by all governmental entities for a person requesting access to a record; and

(m) if the department operates the Division of Archives and Records Service as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee.

(3) The state archives may:

(a) establish a report and directives management program; and

(b) establish a forms management program.

(4) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services consistent with this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 341, 2010 General Session

63A-12-102. State archivist -- Duties.

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

(a) the enrolled copy of the Utah constitution;

(b) the acts and resolutions passed by the Legislature;

(c) all records kept or deposited with the state archivist as provided by law;

(d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives;

(e) Indian war records; and

(f) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be

transferred to the state archives.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-103. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;

(3) ensure that officers and employees of the governmental entity that receive or process records requests receive required training on the procedures and requirements of this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(4) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;

(5) submit to the state archivist proposed schedules of records for final approval by the records committee;

(6) cooperate with the state archivist in conducting surveys made by the state archivist;

(7) comply with rules issued by the Department of Administrative Services as provided by Section 63A-12-104;

(8) report to the state archives the designation of record series that it maintains;

(9) report to the state archives the classification of each record series that is classified; and

(10) establish and report to the state archives retention schedules for objects that the governmental entity determines are not defined as a record under Section 63G-2-103, but that have historical or evidentiary value.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-104. Rulemaking authority.

(1) The executive director of the Department of Administrative Services, with the recommendation of the state archivist, may make rules as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement provisions of this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, dealing with procedures for the collection, storage, designation, classification, access, and management of records.

(2) A governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts that fall within the definition of a governmental entity under this chapter, may, by rule, specify at which level the

requirements specified in this chapter shall be undertaken.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-105. Records are property of the state -- Disposition -- Penalties for intentional mutilation or destruction.

(1) All records created or maintained by a state governmental entity are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

(2) (a) Except as provided in Subsection (2)(b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.

(c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.

(3) (a) It is unlawful for a person to intentionally mutilate, destroy, or to otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage, or disposal is in contravention of:

- (i) a governmental entity's properly adopted retention schedule; or
- (ii) if no retention schedule has been properly adopted by the governmental entity, the model retention schedule, as provided in Section 63G-2-604.

(b) Violation of this Subsection (3) is a class B misdemeanor.

(c) An employee of a governmental entity that violates this Subsection (3) may be subject to disciplinary action as provided under Section 63G-2-804.

Amended by Chapter 44, 2009 General Session

63A-12-106. Certified and microphotographed copies.

(1) Upon demand, the state archives shall furnish certified copies of a record in its exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the records committee, or a court of law. When certified by the state archivist under the seal of the state archives, the copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when it determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the

microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-107. Right to replevin.

To secure the safety and preservation of records, the state archivist or the state archivist's representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-108. Inspection and summary of record series.

The state archives shall provide for public inspection of the title and a summary description of each record series.

Renumbered and Amended by Chapter 382, 2008 General Session

63A-12-109. State Archives Fund created -- Donations -- Use of money -- Reporting.

(1) There is created an expendable special revenue fund known as the "State Archives Fund."

(2) The fund consists of money or other assets deposited in the fund from:

- (a) a donation;
- (b) a deposit;
- (c) a contribution;
- (d) a gift;
- (e) an endowment;
- (f) a devise; and
- (g) a bequest of real property, personal property, or service.

(3) The division shall use the fund money for:

(a) the purpose specified by the grantor, if any; or
(b) if no purpose is specified by the grantor, the preservation of and access to the archival records and exhibits.

(4) (a) The fund shall earn interest.

(b) The state treasurer shall deposit all interest earned on money in the fund into the fund.

(5) The division shall annually report on the use of the fund to an appropriation subcommittee designated by the Executive Appropriations Committee as part of the appropriation subcommittee's budgetary process under Title 63J, Chapter 1, Budgetary Procedures Act.

Amended by Chapter 400, 2013 General Session

63A-12-110. Online training course.

- (1) As used in this section, "records officer" is as defined in Section 63G-2-103.
- (2) The division shall:
 - (a) develop an online training course for records officers of all governmental entities and political subdivisions;
 - (b) make the online training course available on or before January 1, 2013;
 - (c) on an annual basis, provide certification to a records officer after the records officer successfully completes the online training course; and
 - (d) post a list on its website of all records officers, including for each:
 - (i) the name of the records officer;
 - (ii) the name of the governmental entity or political subdivision to which the records officer provides services as a records officer;
 - (iii) contact information for the records officer;
 - (iv) the most recent date on which the records officer completed the online training course; and
 - (v) the date on which the records officer's certification expires.
- (3) The online training course described in this section shall train a records officer regarding the provisions of:
 - (a) Title 63G, Chapter 2, Government Records Access and Management Act;
 - (b) rules made under Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (c) other legal and policy matters relating to responding to a public records request.
- (4) The division:
 - (a) shall develop the online training course in consultation with the attorney general's office; and
 - (b) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 377, 2012 General Session

63A-12-111. Government records ombudsman.

- (1) (a) The director of the division shall appoint a government records ombudsman.
- (b) The government records ombudsman may not be a member of the records committee.
- (2) The government records ombudsman shall:
 - (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act;
 - (b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request;
 - (c) upon request, attempt to mediate disputes between requestors and responders; and
 - (d) on an annual basis, report to the Government Operations Interim Committee on the work performed by the government records ombudsman during the previous

year.

(3) The government records ombudsman may not testify, or be compelled to testify, before the records committee, another administrative body, or a court regarding a matter that the government records ombudsman provided services in relation to under this section.

Amended by Chapter 278, 2013 General Session

63A-13-101. Title.

This chapter is known as "Office of Inspector General of Medicaid Services."

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-102. Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) an action or practice that:
 - (i) is inconsistent with sound fiscal, business, or medical practices; and
 - (ii) results, or may result, in unnecessary Medicaid related costs; or
 - (b) reckless or negligent upcoding.
- (2) "Claimant" means a person that:
 - (a) provides a service; and
 - (b) submits a claim for Medicaid reimbursement for the service.
- (3) "Department" means the Department of Health, created in Section 26-1-4.
- (4) "Division" means the Division of Health Care Financing, created in Section 26-18-2.1.
- (5) "Fraud" means intentional or knowing:
 - (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a claim, reimbursement, or services; or
 - (b) a violation of a provision of Subsections 26-20-3 through 26-20-7.
- (6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's office.
- (7) "Health care professional" means a person licensed under:
 - (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
 - (c) Title 58, Chapter 17b, Pharmacy Practice Act;
 - (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
 - (e) Title 58, Chapter 31b, Nurse Practice Act;
 - (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
 - (g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;
 - (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
 - (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
 - (j) Title 58, Chapter 49, Dietitian Certification Act;
 - (k) Title 58, Chapter 60, Mental Health Professional Practice Act;

- (l) Title 58, Chapter 67, Utah Medical Practice Act;
- (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- (o) Title 58, Chapter 70a, Physician Assistant Act; and
- (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.
- (8) "Inspector general" means the inspector general of the office, appointed under Section 63A-13-201.
- (9) "Office" means the Office of Inspector General of Medicaid Services, created in Section 63A-13-201.
- (10) "Provider" means a person that provides:
 - (a) medical assistance, including supplies or services, in exchange, directly or indirectly, for Medicaid funds; or
 - (b) billing or recordkeeping services relating to Medicaid funds.
- (11) "Upcoding" means assigning an inaccurate billing code for a service that is payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking into account reasonable opinions derived from official published coding definitions, would result in a lower Medicaid payment or reimbursement.
- (12) "Waste" means overutilization of resources or inappropriate payment.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-201. Creation of office -- Inspector general -- Appointment -- Term.

- (1) There is created an independent entity within the Department of Administrative Services known as the " Office of Inspector General of Medicaid Services."
- (2) The governor shall:
 - (a) appoint the inspector general of Medicaid services in accordance with Subsection (5)(b), and with the advice and consent of the Senate; and
 - (b) establish the salary for the inspector general of Medicaid services based upon a recommendation from the Department of Human Resource Management which shall be based on a market salary survey conducted by the Department of Human Resource Management.
- (3) A person appointed as the inspector general shall:
 - (a) be a certified public accountant or a certified internal auditor; and
 - (b) have the following qualifications:
 - (i) a general knowledge of the type of methodology and controls necessary to audit, investigate, and identify fraud, waste, and abuse;
 - (ii) strong management skills;
 - (iii) extensive knowledge of, and at least seven years experience with, performance audit methodology;
 - (iv) the ability to oversee and execute an audit; and
 - (v) strong interpersonal skills.
- (4) The inspector general of Medicaid services:
 - (a) shall, except as provided in Subsection (5), serve a term of four years; and
 - (b) may be removed by the governor, for cause.

(5) (a) If the inspector general is removed for cause, a new inspector general shall be appointed, with the advice and consent of the Senate, to serve the remainder of the term of the inspector general of Medicaid services who was removed for cause.

(b) The term of office for the inspector general of Medicaid services in office on January 1, 2013, shall end on December 31, 2014. The governor may appoint an inspector general for a four-year term on January 1, 2015.

(6) The Office of Inspector General of Medicaid Services:

(a) is not under the supervision of, and does not take direction from, the executive director, except for administrative purposes;

(b) shall use the legal services of the state attorney general's office;

(c) shall submit a budget for the office directly to the governor;

(d) except as prohibited by federal law, is subject to:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(v) Title 63G, Chapter 4, Administrative Procedures Act;

(vi) Title 63G, Chapter 6a, Utah Procurement Code;

(vii) Title 63J, Chapter 1, Budgetary Procedures Act;

(viii) Title 63J, Chapter 2, Revenue Procedures and Control Act;

(ix) Title 67, Chapter 19, Utah State Personnel Management Act;

(x) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(xi) Title 52, Chapter 4, Open and Public Meetings Act;

(xii) Title 63G, Chapter 2, Government Records Access and Management Act;

and

(xiii) coverage under the Risk Management Fund created under Section 63A-4-201;

(e) when requested, shall provide reports to the governor, the president of the Senate, or the speaker of the House; and

(f) shall adopt administrative rules to establish policies for employees that are substantially similar to the administrative rules adopted by the Department of Human Resource Management.

Renumbered and Amended by Chapter 12, 2013 General Session

Amended by Chapter 310, 2013 General Session

63A-13-202. Duties and powers of inspector general and office.

(1) The inspector general of Medicaid services shall:

(a) administer, direct, and manage the office;

(b) inspect and monitor the following in relation to the state Medicaid program:

(i) the use and expenditure of federal and state funds;

(ii) the provision of health benefits and other services;

(iii) implementation of, and compliance with, state and federal requirements; and

(iv) records and recordkeeping procedures;

(c) receive reports of potential fraud, waste, or abuse in the state Medicaid

program;

(d) investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program;

(e) consult with the Centers for Medicaid and Medicare Services and other states to determine and implement best practices for:

(i) educating and communicating with health care professionals and providers about program and audit policies and procedures;

(ii) discovering and eliminating fraud, waste, and abuse of Medicaid funds; and

(iii) differentiating between honest mistakes and intentional errors, or fraud, waste, and abuse, if the office enters into settlement negotiations with the provider or health care professional;

(f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program;

(g) work closely with the fraud unit to identify and recover improperly or fraudulently expended Medicaid funds;

(h) audit, inspect, and evaluate the functioning of the division for the purpose of making recommendations to the Legislature and the department to ensure that the state Medicaid program is managed:

(i) in the most efficient and cost-effective manner possible; and

(ii) in a manner that promotes adequate provider and health care professional participation and the provision of appropriate health benefits and services;

(i) regularly advise the department and the division of an action that could be taken to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;

(j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid program, to the fraud unit;

(k) refer potential criminal conduct, including relevant data from the controlled substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58, Chapter 37f, Controlled Substance Database Act;

(l) determine ways to:

(i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program; and

(ii) balance efforts to reduce costs and avoid or minimize increased costs of the state Medicaid program with the need to encourage robust health care professional and provider participation in the state Medicaid program;

(m) recover improperly paid Medicaid funds;

(n) track recovery of Medicaid funds by the state;

(o) in accordance with Section 63A-13-502:

(i) report on the actions and findings of the inspector general; and

(ii) make recommendations to the Legislature and the governor;

(p) provide training to:

(i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; and

(ii) health care professionals and providers on program and audit policies and compliance; and

(q) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:

- (i) the Federal Offices of Inspector General;
- (ii) the Association of Inspectors General; and
- (iii) the United States Government Accountability Office.

(2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a performance or financial audit of:

(i) a state executive branch entity or a local government entity, including an entity described in Section 63A-13-301, that:

(A) manages or oversees a state Medicaid program; or
(B) manages or oversees the use or expenditure of state or federal Medicaid funds; or

(ii) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.

(b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the state Medicaid program or change the policies and procedures of the state Medicaid program.

(ii) The office shall identify conflicts between the state Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid information bulletins and recommend that the department reconcile inconsistencies. If the department does not reconcile the inconsistencies, the office shall report the inconsistencies to the Legislature's Administrative Rules Review Committee created in Section 63G-3-501.

(iii) Beginning July 1, 2013, the office shall review a Medicaid provider manual and a Medicaid information bulletin in accordance with Subsection (2)(b)(ii), prior to the department making the provider manual or Medicaid information bulletin available to the public.

(c) Beginning July 1, 2013, the Department of Health shall submit a Medicaid provider manual and a Medicaid information bulletin to the office for the review required by Subsection (2)(b)(ii) prior to releasing the document to the public. The department and the Office of Inspector General of Medicaid Services shall enter into a memorandum of understanding regarding the timing of the review process under Subsection (2)(b)(iii).

(3) (a) The office shall, in fulfilling the duties under this section to investigate, discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid information bulletins in effect at the time the medical services were provided.

(b) A health care provider may rely on the policy interpretation included in a current Medicaid provider manual or a current Medicaid information bulletin that is available to the public.

(4) The inspector general of Medicaid services, or a designee of the inspector general of Medicaid services within the office, may take a sworn statement or administer an oath.

Amended by Chapter 359, 2013 General Session

63A-13-203. Memorandum of understanding with fraud unit.

The inspector general shall enter into a memorandum of understanding with the fraud unit to:

- (1) formalize communication, cooperation, coordination of efforts, and the sharing of information, on a regular basis, between the office and the fraud unit;
- (2) provide for reporting criminal activity discovered by the office to the fraud unit;
- (3) ensure that investigations and other actions by the office and the fraud unit do not conflict; and
- (4) provide for the sharing and classification of records between the office and the fraud unit under the Government Records Access and Management Act.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-204. Selection and review of claims.

(1) (a) The office shall periodically select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred.

(b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36 months prior to the date of the inception of the investigation or 72 months if there is a credible allegation of fraud. In the event the office or the fraud unit determines that there is fraud as defined in Subsection 63A-13-102(5), then the statute of limitations defined in Subsection 26-20-15(1) shall apply.

(2) The office may directly contact the recipient of record for a Medicaid reimbursed service to determine whether the service for which reimbursement was claimed was actually provided to the recipient of record.

(3) The office shall generate statistics from the sample described in Subsection (1) to determine the type of fraud, waste, or abuse that is most advantageous to focus on in future audits or investigations.

Renumbered and Amended by Chapter 12, 2013 General Session

Amended by Chapter 359, 2013 General Session

63A-13-205. Placement of hold on claims for reimbursement -- Injunction.

(1) The inspector general or the inspector general's designee may, without prior notice, order a hold on the payment of a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.

(2) The office shall, within seven days after the day on which a hold described in Subsection (1) is ordered, notify the claimant that the hold has been placed.

(3) The inspector general or the inspector general's designee may not maintain a hold longer than is necessary to determine whether the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.

(4) A claimant may, at any time during which a hold is in place, appeal the hold under Title 63G, Chapter 4, Administrative Procedures Act.

(5) If a claim is approved or denied before a hearing is held under Title 63G, Chapter 4, Administrative Procedures Act, the appeal shall be dismissed as moot.

(6) The inspector general may request that the attorney general's office seek an injunction to prevent a person from disposing of an asset that is potentially subject to recovery by the state to recover funds due to a person's fraud or abuse.

(7) The department and the division shall fully comply with a hold ordered under this section.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-301. Access to records -- Retention of designation under Government Records Access and Management Act.

(1) In order to fulfill the duties described in Section 63A-13-202, and in the manner provided in Subsection (4), the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:

- (a) the state Medicaid program;
- (b) state or federal Medicaid funds;
- (c) the provision of Medicaid related services;
- (d) the regulation or management of any aspect of the state Medicaid program;
- (e) the use or expenditure of state or federal Medicaid funds;
- (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
- (g) Medicaid program policies, practices, and procedures;
- (h) monitoring of Medicaid services or funds; or
- (i) a fatality review of a person who received Medicaid funded services.

(2) The office shall have access to information in any database maintained by the state or a local government to verify identity, income, employment status, or other factors that affect eligibility for Medicaid services.

(3) The records described in Subsections (1) and (2) include records held or maintained by the department, the division, the Department of Human Services, the Department of Workforce Services, a local health department, a local mental health authority, or a school district. The records described in Subsection (1) include records held or maintained by a provider. When conducting an audit of a provider, the office shall, to the extent possible, limit the records accessed to the scope of the audit.

(4) A record, described in Subsection (1) or (2), that is accessed or copied by the office:

(a) may be reviewed or copied by the office during normal business hours, unless otherwise requested by the provider or health care professional under Subsection (4)(b);

(b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and copied in a manner, on a day, and at a time that is minimally disruptive to the health care professional's or provider's care of patients, as requested by the health

care professional or provider;

(c) may be submitted electronically;

(d) may be submitted together with other records for multiple claims; and

(e) if it is a government record, shall retain the classification made by the entity responsible for the record, under Title 63G, Chapter 2, Government Records Access and Management Act.

(5) Notwithstanding any provision of state law to the contrary, the office shall have the same access to all records, information, and databases to which the department or the division have access.

(6) The office shall comply with the requirements of federal law, including the Health Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the office's:

(a) access, review, retention, and use of records; and

(b) use of information included in, or derived from, records.

Renumbered and Amended by Chapter 12, 2013 General Session
Amended by Chapter 359, 2013 General Session

63A-13-302. Access to employees -- Cooperating with investigation or audit.

(1) The office shall have access to interview the following persons if the inspector general determines that the interview may assist the inspector general in fulfilling the duties described in Section 63A-13-202:

(a) a state executive branch official, executive director, director, or employee;

(b) a local government official or employee;

(c) a consultant or contractor of a person described in Subsection (1)(a) or (b);

or

(d) a provider or a health care professional or an employee of a provider or a health care professional.

(2) A person described in Subsection (1) and each supervisor of the person shall fully cooperate with the office by:

(a) providing the office or the inspector general's designee with access to interview the person;

(b) completely and truthfully answering questions asked by the office or the inspector general's designee;

(c) providing the records, described in Subsection 63A-13-301(1), in the manner described in Subsection 63A-13-301(4), requested by the office or the inspector general's designee; and

(d) providing the office or the inspector general's designee with information relating to the office's investigation or audit.

(3) A person described in Subsection (1)(a) or (b) and each supervisor of the person shall fully cooperate with the office by:

(a) providing records requested by the office or the inspector general's designee in the manner described in Subsection 63A-13-301(4); and

(b) providing the office or the inspector general's designee with information

relating to the office's investigation or audit, including information that is classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 12, 2013 General Session
Amended by Chapter 359, 2013 General Session

63A-13-303. Cooperation and support.

The department, the division, each consultant or contractor of the department or division, and each provider shall provide its full cooperation and support to the inspector general and the office in fulfilling the duties of the inspector general and the office.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-304. Interference with an investigation or audit prohibited.

No person may:

- (1) interfere with or impede an investigation or audit of the office or fraud unit; or
- (2) interfere with the office relative to the content of a report, the conclusions reached in a report, or the manner of disclosing the results and findings of the office.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-305. Audit and investigation procedures.

(1) (a) The office shall, in accordance with Section 63A-13-602, adopt administrative rules in consultation with providers and health care professionals subject to audit and investigation under this chapter to establish procedures for audits and investigations that are fair and consistent with the duties of the office under this chapter.

(b) If the providers and health care professionals do not agree with the rules proposed or adopted by the office under Subsection (1)(a) or Section 63A-13-602, the providers or health care professionals may:

(i) request a hearing for the proposed administrative rule or seek any other remedies under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) request a review of the rule by the Legislature's Administrative Rules Review Committee created in Section 63G-3-501.

(2) The office shall notify and educate providers and health care professionals subject to audit and investigation under this chapter of the providers' and health care professionals' responsibilities and rights under the administrative rules adopted by the office under the provisions of this section and Section 63A-13-602.

Enacted by Chapter 12, 2013 General Session

63A-13-401. Subpoena power -- Enforcement.

(1) The inspector general has the power to issue a subpoena to obtain a record or interview a person that the office or inspector general has the right to access under Part 3, Investigation or Audit.

(2) A person who fails to comply with a subpoena issued by the inspector general or who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

(a) is in contempt of the inspector general; and

(b) upon request by the inspector general, the attorney general shall:

(i) file a motion for an order to compel obedience to the subpoena with the district court;

(ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the inspector general; or

(iii) pursue other legal remedies against the person.

(3) Upon receipt of a motion under Subsection (2), the court:

(a) shall expedite the hearing and decision on the motion; and

(b) may:

(i) order the person named in the subpoena to comply with the subpoena; and

(ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the inspector general.

(4) (a) If a subpoena described in this section requires the production of accounts, books, papers, documents, or other tangible items, the person or entity to whom it is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

(b) The inspector general may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (3).

(c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.

(5) Nothing in this section prevents the inspector general from seeking an extraordinary writ to remedy contempt of the inspector general.

(6) Any party aggrieved by a decision of a court under this section may appeal that decision directly to the Utah Supreme Court.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-501. Duty to report potential Medicaid fraud to the office or fraud unit.

(1) (a) Except as provided in Subsection (1)(b), a health care professional, a provider, or a state or local government official or employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.

(b) (i) The reporting exception in this Subsection (1)(b) does not apply to fraud and abuse. Suspected fraud and abuse shall be reported in accordance with Subsection (1).

(ii) If a person described in Subsection (1)(a) reasonably believes that the suspected waste is a mistake, and is not intentional or knowing, the person may first report the suspected waste to the provider, health care professional, or compliance officer for the provider or health care professional.

(iii) The person described in Subsection (1)(b)(ii) shall report the suspected waste to the office or the fraud unit unless, within 30 days after the day on which the person reported the suspected waste to the provider, health care professional, or compliance officer, the provider, health care professional, or compliance officer demonstrates to the person that the suspected waste has been corrected.

(2) A person who makes a report under Subsection (1) may request that the person's name not be released in connection with the investigation.

(3) If a request is made under Subsection (2), the person's identity may not be released to any person or entity other than the office, the fraud unit, or law enforcement, unless a court of competent jurisdiction orders that the person's identity be released.

Renumbered and Amended by Chapter 12, 2013 General Session
Amended by Chapter 359, 2013 General Session

63A-13-502. Report and recommendations to governor and Executive Appropriations Committee.

(1) The inspector general of Medicaid services shall, on an annual basis, prepare a written report on the activities of the office for the preceding fiscal year.

(2) The report shall include:

(a) non-identifying information, including statistical information, on:

(i) the items described in Subsection 63A-13-202(1)(b) and Section 63A-13-204;

(ii) action taken by the office and the result of that action;

(iii) fraud, waste, and abuse in the state Medicaid program;

(iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

(v) measures taken by the state to discover and reduce fraud, waste, and abuse in the state Medicaid program;

(vi) audits conducted by the office;

(vii) investigations conducted by the office and the results of those investigations; and

(viii) administrative and educational efforts made by the office and the division to improve compliance with Medicaid program policies and requirements;

(b) recommendations on action that should be taken by the Legislature or the governor to:

(i) improve the discovery and reduction of fraud, waste, and abuse in the state Medicaid program;

(ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

(iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

(c) recommendations relating to rules, policies, or procedures of a state or local

government entity; and

(d) services provided by the state Medicaid program that exceed industry standards.

(3) The report described in Subsection (1) may not include any information that would interfere with or jeopardize an ongoing criminal investigation or other investigation.

(4) On or before October 1 of each year, the inspector general of Medicaid services shall provide the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature and to the governor on or before October 1 of each year.

(5) The inspector general of Medicaid services shall present the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature before November 30 of each year.

Renumbered and Amended by Chapter 12, 2013 General Session
Amended by Chapter 359, 2013 General Session

63A-13-601. Provision of contract services to Office of Inspector General of Medicaid Services.

(1) The division and the assistant attorneys general assigned to the division shall provide, without charge, contract review, contract enforcement, and other contract management services to the office.

(2) The division shall ensure that the services described in Subsection (1) are provided in an expeditious manner.

(3) The attorney general shall designate one of the assistant attorneys general assigned to the division to give first priority to providing the services described in Subsection (1) to the office.

(4) The office and the division shall enter into a memorandum of understanding in order to execute the requirements of this section in an effective and efficient manner.

Renumbered and Amended by Chapter 12, 2013 General Session

63A-13-602. Rulemaking authority.

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 63A-13-305, that establish policies, procedures, and practices, in accordance with the provisions of this chapter, relating to:

(1) inspecting and monitoring the state Medicaid Program;

(2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid program;

(3) developing and implementing the principles and standards described in Subsection 63A-13-202(1)(q);

(4) auditing, inspecting, and evaluating the functioning of the division under Subsection 63A-13-202(1)(h);

(5) conducting an audit under Subsection 63A-13-202(1)(h) or (2); or

(6) ordering a hold on the payment of a claim for reimbursement under Section

63A-13-205.

Renumbered and Amended by Chapter 12, 2013 General Session
Amended by Chapter 359, 2013 General Session

63A-14-101. Title.

- (1) This chapter is known as "Review of Executive Branch Ethics Complaints."
- (2) This part is known as "General Provisions."

Enacted by Chapter 426, 2013 General Session

63A-14-102. Definitions.

As used in this chapter:

- (1) "Commission" means the Independent Executive Branch Ethics Commission, created in Section 63A-14-202.
- (2) "Complainant" means an individual who files a complaint under Subsection 63A-14-402(1)(a).
- (3) "Executive branch elected official" means:
 - (a) the governor;
 - (b) the lieutenant governor;
 - (c) the state auditor;
 - (d) the state treasurer; or
 - (e) the attorney general.
- (4) "Improper purpose" includes harassing a respondent, causing unwarranted harm to a respondent's reputation, or causing unnecessary expenditure of public funds.
- (5) "Respondent" means the executive branch elected official against whom an ethics complaint described in Section 63A-14-402 is filed.
- (6) "Violation" means a high crime, a misdemeanor, or malfeasance in office.

Enacted by Chapter 426, 2013 General Session

63A-14-201. Title.

This part is known as "Independent Executive Branch Ethics Commission."

Enacted by Chapter 426, 2013 General Session

63A-14-202. Independent Executive Branch Ethics Commission -- Membership.

- (1) (a) There is created the Independent Executive Branch Ethics Commission, consisting of the following five members appointed by the governor, each of whom shall be registered to vote in the state at the time of appointment:
 - (i) two members who served:
 - (A) as elected officials in state government no more recently than four years before the day on which the member is appointed; or
 - (B) in a management position in the state executive branch no more recently

than four years before the day on which the member is appointed;

(ii) one member who:

(A) has served, but no longer actively serves, as a judge of a court in the state;

or

(B) is a licensed attorney in the state and is not, and has not been, a judge; and

(iii) two citizen members.

(b) The governor shall make appointments to the commission as follows:

(i) each executive branch elected official, other than the governor, shall select, and provide to the governor, at least two names for potential appointment to one of the membership positions described in Subsection (1)(a);

(ii) the governor shall determine which of the executive branch elected officials described in Subsection (1)(b)(i) shall select names for which membership position;

(iii) the governor shall appoint to the commission one of the names provided by each executive branch elected official described in Subsection (1)(b)(i);

(iv) the governor shall directly appoint the remaining member of the commission; and

(v) if an executive branch elected official fails to submit names to the governor within 15 days after the day on which the governor makes the determination described in Subsection (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership position.

(2) A member of the commission may not, during the member's term of office on the commission, act or serve as:

(a) an officeholder as defined in Section 20A-11-101;

(b) an agency head as defined in Section 67-16-3;

(c) a lobbyist as defined in Section 36-11-102;

(d) a principal as defined in Section 36-11-102; or

(e) an employee of the state.

(3) (a) Except as provided in Subsection (3)(b), each member of the commission shall serve a four-year term.

(b) The governor shall set the first term of two of the members of the commission at two years, so that approximately half of the commission is appointed, or reappointed, every two years.

(c) When a vacancy occurs in the commission's membership for any reason, the governor shall appoint a replacement member for the unexpired term of the vacating member, in accordance with Subsection (1).

(d) The governor may not appoint a member to serve more than two full terms, whether those terms are two or four years.

(e) (i) The governor, or a majority of the commission, may remove a member from the commission only for cause.

(ii) The governor may not remove a member from the commission during any period of time when the commission is investigating or considering a complaint alleging an ethics violation against the governor or lieutenant governor.

(f) If a commission member determines that the commission member has a conflict of interest in relation to a complaint, the remaining members of the commission shall appoint an individual to serve in that member's place for the purpose of reviewing

that complaint.

(4) (a) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

(5) (a) The commission members shall convene a meeting annually each January and elect, by majority vote, a chair from among the commission members.

(b) An individual may not serve as chair for more than two consecutive years.

(6) The commission:

(a) is established within the department for budgetary and general administrative purposes only; and

(b) is not under the direction or control of the department, the executive director, or any other officer or employee of the department.

Enacted by Chapter 426, 2013 General Session

63A-14-203. Independent Executive Branch Ethics Commission -- Meetings -- Annual summary report -- Staff.

(1) The commission shall meet for the purpose of reviewing an ethics complaint when:

(a) except as otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or

(b) called to meet by a majority vote of the commission.

(2) (a) A majority of the commission is a quorum.

(b) A majority vote of a quorum present constitutes the action of the commission.

(3) (a) The commission shall prepare an annual summary data report that contains:

(i) a general description of the activities of the commission during the past year;

(ii) the number of ethics complaints filed with the commission;

(iii) the number of ethics complaints reviewed by the commission;

(iv) a summary description of ethics complaints that formed the basis for a commission finding that an allegation in a complaint has merit; and

(v) an accounting of the commission's budget and expenditures.

(b) The commission shall submit the summary data report to the Legislative Management Committee before December 1 each year.

(c) The summary data report is a public record.

(4) (a) The commission may employ staff at a level that is reasonable to assist the commission in performing the commission's duties as established in this chapter.

(b) Except as provided in Subsection (4)(c), staff for the commission may not perform services for any other person in state government.

(c) A person employed as staff for the commission may be the same person employed as staff for the Independent Legislative Ethics Commission, if the staff

ensures that proper protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of interest.

(5) Except as expressly otherwise provided in this chapter, all meetings held under this chapter are closed to the public.

Enacted by Chapter 426, 2013 General Session

63A-14-301. Title.

This part is known as "General Powers and Procedures."

Enacted by Chapter 426, 2013 General Session

63A-14-302. Authority to review complaint -- Grounds for complaint -- Limitations on filings.

(1) Subject to the requirements of this chapter, the commission may review an ethics complaint against an executive branch elected official if the complaint alleges that the executive branch elected official has committed a violation.

(2) Individuals who file a complaint for an alleged violation shall file the complaint within two years after the later of:

(a) the day on which the action or omission that forms the basis for the alleged violation occurs or would have been discovered by a reasonable person; or

(b) the day on which a plea or conviction that forms the basis for the allegation is entered.

(3) (a) A complaint may not contain an allegation that was previously reviewed by the commission, unless:

(i) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission when the allegation was previously reviewed; and

(ii) the allegation and the general facts and circumstances supporting the allegation were only reviewed by the commission on one previous occasion.

(b) If an allegation in a complaint does not comply with the requirements of Subsection (3)(a), the commission or the chair shall dismiss the allegation with prejudice.

Enacted by Chapter 426, 2013 General Session

63A-14-303. General powers -- Jurisdiction.

(1) The commission has jurisdiction only over an individual who is currently serving as an executive branch elected official.

(2) The commission or the chair shall dismiss an ethics complaint if:

(a) the respondent resigns from the respondent's position as an executive branch elected official; or

(b) the House of Representatives convenes to consider impeachment of the executive branch elected official.

(3) (a) The commission may suspend commission proceedings during a period

of time when a criminal investigation or prosecution, based in whole or in part on an allegation in the complaint, is pending.

(b) The time periods and deadlines described in this chapter are tolled during a suspension described in Subsection (3)(a).

(4) The commission does not have jurisdiction over a violation that occurs before March 14, 2013.

Enacted by Chapter 426, 2013 General Session

63A-14-401. Title.

This part is known as "Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

63A-14-402. Ethics complaints -- Filing -- Form.

(1) (a) The following individuals may file an ethics complaint against an executive branch elected official if the complaint meets the requirements of Section 63A-14-302 and Subsection (1)(b):

(i) two or more executive branch elected officials, deputies of elected officials, executive directors of departments in the executive branch, or directors of divisions in the executive branch, if the complaint contains evidence or sworn testimony that:

(A) describes the facts and circumstances supporting the alleged violation; and

(B) is generally admissible under the Utah Rules of Evidence; or

(ii) two or more registered voters who currently reside in Utah and are not individuals described in Subsection (1)(a)(i), if, for each alleged violation pled in the complaint, at least one of those registered voters has actual knowledge of the facts and circumstances supporting the alleged violation.

(b) Complainants may file a complaint only against an individual who is serving as an executive branch elected official on the date that the complaint is filed.

(2) (a) The lieutenant governor shall post, on the home page of the lieutenant governor's website, a conspicuous and clearly identified link to the name and address of a person authorized to accept a complaint on behalf of the commission.

(b) Complainants shall file a complaint with the person described in Subsection (2)(a).

(c) An individual may not file a complaint during the 60 calendar days immediately preceding:

(i) a regular primary election in which the accused executive branch elected official is a candidate; or

(ii) a regular general election in which the accused executive branch elected official is a candidate, unless the accused executive branch elected official is unopposed in the election.

(3) The complainants shall ensure that each complaint filed under this rule is in writing and contains the following information:

(a) the name and position or title of the respondent;

(b) the name, address, and telephone number of each individual who is filing

the complaint;

(c) a description of each alleged violation, including for each alleged violation:

(i) a reference to any criminal provision that the respondent is alleged to have violated;

(ii) a reference to any other provision of law that the respondent is alleged to have violated or failed to comply with;

(iii) the name of the complainant or complainants who have actual knowledge of the supporting facts and circumstances; and

(iv) the facts and circumstances supporting the allegation, which shall be provided by:

(A) copies of official records or documentary evidence; or

(B) one or more affidavits, each of which shall comply with the format described in Subsection (4);

(d) a list of the witnesses that the complainants desire to call, including for each witness:

(i) the name, address, and, if available, one or more telephone numbers of the witness;

(ii) a brief summary of the testimony to be provided by the witness; and

(iii) a specific description of any documents or evidence the complainants desire the witness to produce;

(e) a statement that each complainant:

(i) has reviewed the allegations contained in the complaint and the affidavits and documents attached to the complaint;

(ii) believes that the complaint is submitted in good faith and not for any improper purpose; and

(iii) believes the allegations contained in the complaint to be true and accurate; and

(f) the signature of each complainant.

(4) An affidavit described in Subsection (3)(c)(iv)(B) shall include:

(a) the name, address, and telephone number of the affiant;

(b) a statement that the affiant has actual knowledge of the facts and circumstances described in the affidavit;

(c) the facts and circumstances testified to by the affiant;

(d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and

(e) the signature of the affiant.

Enacted by Chapter 426, 2013 General Session

63A-14-403. Privacy of ethics complaint -- Dismissal -- Contempt.

(1) (a) Except as provided in Subsection (2) or (3), a person, including the complainant, the respondent, a commission member, or staff to the commission may not disclose the existence of a complaint, a response, or any information concerning an alleged violation that is the subject of a complaint.

(b) A person that violates this Subsection (1) may be held in contempt of the

commission in accordance with Section 63A-14-705.

(2) The restrictions described in Subsection (1) do not apply to:

(a) a complaint or response that is publicly released by the commission and referred to the Legislature; or

(b) the respondent's voluntary disclosure that the commission determined that all allegations in a complaint are without merit, after the commission issues an order dismissing the complaint under Section 63A-14-605.

(3) Nothing in this section prevents a person from disclosing facts or allegations regarding potential criminal violations to law enforcement authorities.

(4) If the existence of an ethics complaint is publicly disclosed by a person, other than the respondent or an agent of the respondent, during the period that the commission is reviewing the complaint, the commission shall summarily dismiss the complaint without prejudice.

Enacted by Chapter 426, 2013 General Session

63A-14-501. Title.

This part is known as "Preliminary Action."

Enacted by Chapter 426, 2013 General Session

63A-14-502. Initial review of ethics complaint -- Notice.

(1) Within five business days after the day on which the commission receives a complaint, the staff of the commission, in consultation with the chair, shall examine the complaint to determine if it is in compliance with Sections 63A-14-302 and 63A-14-402.

(2) If the chair determines that the complaint does not comply with Sections 63A-14-302 and 63A-14-402, the chair shall:

(a) return the complaint to the first complainant named on the complaint with:

(i) a description of the reason for the noncompliance; and

(ii) a copy of the applicable provisions of law; and

(b) without disclosing the identity of the respondent, notify the other members of the commission that a complaint was filed against an executive branch elected official, but that the complaint was returned for noncompliance with the requirements of this chapter.

(3) Each member of the commission and the commission's staff shall keep confidential the fact that a complaint was filed and returned until the commission submits the annual summary data report described in Section 63A-14-203.

(4) If a complaint is returned for noncompliance with the requirements of this chapter, the complainants may file another complaint if the new complaint independently meets the requirements of Sections 63A-14-302 and 63A-14-402, including any requirements for timely filing.

(5) If the chair determines that a complaint complies with the requirements of this chapter, the chair shall:

(a) accept the complaint;

(b) notify the members of the commission that:

- (i) a complaint has been filed against an executive branch elected official; and
- (ii) the chair has accepted the complaint; and
- (c) within five business days after the day on which the commission receives the complaint, forward the complaint to the respondent via personal delivery or a delivery method that provides verification of receipt, and include with the complaint notice of the respondent's deadline for filing a response to the complaint.

(6) (a) The identity of the respondent and the allegations raised in a complaint are confidential pending the commission's review of the complaint.

(b) The fact that a complaint was filed is confidential until the commission publicly discloses the existence of the complaint by:

- (i) issuing a finding that an allegation in the complaint has merit; or
- (ii) submitting the annual summary data report described in Section 63A-14-203.

Enacted by Chapter 426, 2013 General Session

63A-14-503. Meeting of the commission for review of complaint -- Procedures.

(1) No later than 10 days after the day on which a complaint is accepted under Section 63A-14-502, the chair shall:

(a) except as provided in Subsection (2), schedule a commission meeting on a date:

(i) no later than 60 days after the day on which the chair accepts the complaint; and

(ii) no earlier than 40 days after the day on which the chair accepts the complaint;

(b) place the complaint on the agenda for consideration at that meeting;

(c) provide notice of the date, time, and location of the meeting to:

(i) the members of the commission;

(ii) the first complainant named in the complaint; and

(iii) the respondent; and

(d) provide a copy of the complaint to each member of the commission.

(2) The commission may, by majority vote, change the date of the meeting for review of the complaint in order to accommodate:

(a) a meeting described in Subsection 63A-14-602(2); or

(b) necessary scheduling requirements.

(3) The commission may conduct a vote to change the date of the meeting described in Subsection (2) by phone or electronic means if the members do not discuss any other matters relating to the complaint during the communication.

Enacted by Chapter 426, 2013 General Session

63A-14-504. Response to ethics complaint -- Filing -- Form.

(1) A respondent shall file a response to a complaint with the commission no later than 20 days after the day on which the respondent receives delivery of the complaint.

(2) A respondent shall ensure that the response is in writing and contains the following information:

- (a) the name, address, and telephone number of the respondent;
 - (b) for each alleged violation in the complaint:
 - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense, supported by one or more affidavits, each of which shall comply with the format described in Subsection (3); and
 - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
 - (A) copies of official records or documentary evidence; or
 - (B) one or more affidavits, each of which shall comply with the format described in Subsection (3);
 - (c) a list of the witnesses that the respondent desires to call, including for each witness:
 - (i) the name, address, and, if available, telephone number of the witness;
 - (ii) a brief summary of the testimony to be provided by the witness; and
 - (iii) a specific description of any documents or evidence that the respondent desires the witness to produce;
 - (d) a statement that the respondent:
 - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
 - (ii) believes the contents of the response to be true and accurate; and
 - (e) the signature of the respondent.
- (3) An affidavit described in Subsection (2)(b) shall include:
- (a) the name, address, and telephone number of the affiant;
 - (b) a statement that the affiant has actual knowledge of the facts and circumstances alleged in the affidavit;
 - (c) the facts and circumstances testified to by the affiant;
 - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
 - (e) the signature of the affiant.
- (4) Within five business days after the day on which the commission receives the response, the commission shall provide copies of the response to:
- (a) each member of the commission; and
 - (b) the first named complainant on the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-601. Title.

This part is known as "Ethics Proceedings."

Enacted by Chapter 426, 2013 General Session

63A-14-602. Review of ethics complaint by commission.

(1) The scope of the commission's review of a complaint is limited to the alleged violations stated in the complaint.

(2) Before holding a meeting for review of a complaint, the chair may schedule a separate meeting of the commission to:

(a) review a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the commission, because the complaint pleads facts or circumstances against an executive branch elected official that have already been reviewed by the commission;

(b) hear motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures; or

(c) hold a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint.

(3) (a) The commission shall comply with the Utah Rules of Evidence except where the commission determines, by majority vote, that a rule is not compatible with the requirements of this chapter.

(b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 63A-14-703.

(4) (a) The following individuals may be present during the presentation of testimony and evidence to the commission:

(i) the complainants, except that no more than three complainants may be present at one time;

(ii) the complainants' counsel, if applicable;

(iii) the respondent;

(iv) the respondent's counsel, if applicable;

(v) members of the commission;

(vi) staff to the commission;

(vii) a witness, while testifying before the commission; and

(viii) necessary security personnel.

(b) The complainants, respondent, and counsel for a complainant or respondent may be excluded from a portion of the meeting when the commission discusses administrative, procedural, legal, or evidentiary issues by:

(i) the order of the chair, subject to override as provided in Section 63A-14-703; or

(ii) a majority vote of the commission.

(c) When the commission deliberates at the conclusion of presentation of testimony and evidence, the commission shall ensure that those deliberations are closed to all persons except for the members of the commission and commission staff.

(5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, accommodate administrative needs, or accommodate the attendance of commission members, witnesses, or a party, the commission may:

(a) after notice to the parties, adjourn and continue the meeting to a future date and time; and

- (b) establish that future date and time by majority vote.

Enacted by Chapter 426, 2013 General Session

63A-14-603. Record -- Recording of meetings.

(1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or other recording device in a meeting authorized by this chapter.

(b) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.

(c) If the commission elects, by a majority vote, to release in a public meeting the commission's finding that an allegation in the complaint has merit, the commission may, upon a majority vote of the commission, open the public meeting to cameras or other recording devices.

(2) In addition to the recording required in Subsection (1)(b), the chair shall ensure that a record of the meeting is made, that includes:

(a) official minutes taken during the meeting, if any;

(b) copies of all documents or other items admitted into evidence by the commission;

(c) copies of any documents or written orders or rulings issued by the chair or the commission; and

(d) any other information that a majority of the commission or the chair directs.

(3) Except for a finding prepared by the commission that is classified as public under Section 63A-14-605, any recording, testimony, evidence, or other record of a meeting authorized by this chapter is a private record under Section 63G-2-302 and may not be disclosed.

Enacted by Chapter 426, 2013 General Session

63A-14-604. Process for making a decision -- Deliberations.

(1) (a) After each party presents a closing argument, the commission shall, at the direction of the chair, begin private deliberations.

(b) The deliberations described in Subsection (1)(a) may be held:

(i) immediately after conclusion of the closing arguments; or

(ii) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.

(2) (a) The chair shall conduct the deliberations.

(b) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote of the commission.

(3) (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating whether the allegation is:

(i) proved, by clear and convincing evidence, to have merit; or

(ii) not proved to have merit.

(b) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.

(4) (a) An allegation is determined to not have merit unless four of the five members of the commission vote that the allegation has merit.

(b) An allegation that is not determined to have merit is dismissed.

(5) (a) Before issuing an order or a finding under Section 63A-14-605, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

(b) A motion to reconsider a vote may only be made by a member of the commission who voted in favor of the vote to be reconsidered.

(6) At the conclusion of deliberations, the commission shall prepare an order or a finding in accordance with Section 63A-14-605.

Enacted by Chapter 426, 2013 General Session

63A-14-605. Order or finding of merit by the commission.

(1) If the commission determines that all allegations in the complaint are without merit, the commission shall:

(a) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have merit;

(b) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Section 63G-2-302;

(c) provide notice of the determination, in a manner determined by a majority vote of the commission, to:

(i) the respondent; and

(ii) the first complainant named on the complaint; and

(d) provide notice to each person named in Subsection (1)(c) that, under the provisions of Section 63A-14-403 and other provisions of this chapter, a person who discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.

(2) If the commission determines that one or more of the allegations in the complaint have merit, the commission shall:

(a) if one or more allegations were not found to have merit, enter into the record an order dismissing the allegations that were found not to have merit;

(b) within 30 business days after the day on which the commission makes the determination, prepare a written finding, for submission to the Legislature, that:

(i) lists the name of each complainant;

(ii) lists the name of the respondent;

(iii) states the date of the finding;

(iv) for each allegation that was found to have merit:

(A) describes the high crime, misdemeanor, or malfeasance in office allegedly committed by the respondent;

(B) states the number and names of commission members who voted that the allegation has merit and the number and names of commission members who voted that the allegation does not have merit;

(C) subject to Subsection (3), at the option of those members voting that the

allegation has merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation has merit; and

(D) subject to Subsection (3), at the option of those members who voted that the allegation does not have merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation does not have merit;

(v) contains any general statement that is adopted for inclusion in the finding by a majority of the members of the commission;

(vi) describes the allegations found by the commission to have merit;

(vii) states the name of each member of the commission; and

(viii) is signed by each member of the commission;

(c) direct staff to publicly release the finding, the complaint, and the response, subject to the redaction of any allegations that were dismissed; and

(d) classify all other recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this chapter as private records under Section 63G-2-302.

(3) A statement described in Subsection (2)(b)(iv)(C) or (D) may not cite specific evidence, specific testimony, or specific witnesses.

(4) The commission shall ensure that, within five business days after the day on which the commission finishes preparing the written finding described in Subsection (2)(b):

(a) the complaint and the response are redacted to remove references to the allegations found by the commission to be without merit;

(b) a copy of the finding is made publicly available and provided to:

(i) the respondent;

(ii) the first complainant named on the complaint;

(iii) the speaker of the House of Representatives;

(iv) the president of the Senate; and

(v) the governor; and

(c) the following documents are made publicly available and are provided to the speaker of the House of Representatives and the president of the Senate:

(i) a cover letter generally describing the allegations in the edited complaint that are found by the commission to have merit;

(ii) a copy of the edited complaint;

(iii) a copy of the edited response; and

(iv) a copy of the finding.

Enacted by Chapter 426, 2013 General Session

63A-14-606. Comments on complaint under review by Legislature.

(1) Except as provided in Subsection (2), while a complaint is under review by the Legislature, a member of the commission may not comment publicly or privately about the commission's decision, reasoning, or other matters relating to the ethics complaint, but may provide or refer a questioner to the commission's written finding.

(2) Subsection (1) does not prohibit statements made:

(a) to an individual authorized by the Legislature to conduct an investigation for

the purpose of assisting the Legislature in conducting proceedings related to impeachment or removal from office;

(b) to a legislative committee, the House, or the Senate in relation to proceedings for impeachment or trial of impeachment; or

(c) as part of a criminal investigation.

Enacted by Chapter 426, 2013 General Session

63A-14-701. Title.

This part is known as "General Provisions Governing Hearings on Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

63A-14-702. General procedures for conducting a hearing on an ethics complaint.

(1) In conducting a hearing on a complaint, the commission shall comply with the following process in the order specified:

(a) introduction and instructions for procedure and process, at the discretion of the chair;

(b) procedural motions, adoption of evidentiary standards, or other general matters;

(c) complainants' opening argument, to be presented by a complainant or complainants' counsel;

(d) complainants' presentation of evidence and witnesses in support of allegations in the complaint;

(e) consideration of motions to dismiss the complaint or motions for a directed verdict, as applicable;

(f) respondent's opening argument, to be presented by the respondent or respondent's counsel;

(g) respondent's presentation of evidence and witnesses refuting the allegations in the complaint;

(h) presentation of rebuttal evidence and witnesses by the complainants, at the discretion of the chair;

(i) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;

(j) complainants' closing argument, to be presented by a complainant or complainants' counsel;

(k) respondent's closing argument, to be presented by the respondent or respondent's counsel;

(l) deliberations by the commission; and

(m) adoption of the commission's findings.

(2) The commission may, in extraordinary circumstances, and consistent with due process considerations, vary the order described in Subsection (1) by majority vote and by providing notice to the parties.

(3) In addition to witnesses or evidence subpoenaed at the request of a complainant or a respondent, the chair or the commission may, consistent with due process considerations, subpoena and schedule the examination of witnesses or evidence that the chair or the commission determines will assist the commission in making a determination on the merits of the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-703. Chair as presiding judge.

(1) Except as expressly provided otherwise in this chapter, the chair is vested with the power to direct the commission during meetings authorized by this chapter.

(2) Except as otherwise provided in this chapter, the commission may overrule a decision of the chair if:

(a) a member of the commission:

(i) states that the member desires to overrule the decision of the chair; and

(ii) states the basis for the member's objection to the decision of the chair; and

(b) a majority of the commission votes to overrule the decision of the chair.

(3) The chair may set time limitations on any part of a meeting authorized by this chapter.

Enacted by Chapter 426, 2013 General Session

63A-14-704. Subpoena powers.

(1) For all proceedings authorized by this chapter, the commission may issue a subpoena to:

(a) require the attendance of a witness; or

(b) direct the production of evidence.

(2) The commission shall issue a subpoena under this section:

(a) as required under Section 63A-14-706;

(b) at the direction of the chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint; or

(c) upon a vote of a majority of the commission members.

Enacted by Chapter 426, 2013 General Session

63A-14-705. Contempt of the commission -- Enforcement.

(1) Except as provided in Subsection (9), the following actions constitute contempt of the commission:

(a) disobedience to a direction of the commission or the chair in relation to actions and proceedings under this chapter;

(b) failure to answer a question during a commission meeting when directed to answer a question by:

(i) the chair, unless the direction is overridden by the commission under Section 63A-14-703; or

(ii) a majority of the members of the commission;

(c) failure to comply with a subpoena or other order issued under the authority of this chapter;

(d) violation of the provisions of Subsection 63A-14-403(1);

(e) violation of the communication provisions described in Section 63A-14-707;

(f) violation of a request to comply with a provision of this chapter by the chair or a majority of the members of the commission; or

(g) any other ground that is specified in statute or recognized at common law.

(2) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:

(a) the chair, subject to the provisions of Section 63A-14-703; or

(b) a majority of the members of the commission;

(3) If a person that is the subject of a subpoena issued under this chapter fails to comply with the subpoena, refuses to testify to a matter upon which the person may be lawfully interrogated, or is otherwise in contempt of the commission, the commission or the chair may:

(a) file in district court a motion for an order to compel obedience to a subpoena or a lawful order of the commission or the chair;

(b) file in district court a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person for contempt of the commission; or

(c) pursue other remedies against a person in contempt of the commission.

(4) The court shall expedite the hearing and decision on a motion described in Subsection (3).

(5) A court may:

(a) order the person named in the subpoena, or subject to an order, to comply with the subpoena or order; or

(b) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena, subject to the order, or otherwise held in contempt of the commission.

(6) (a) If a subpoena issued under this chapter requires the production of accounts, books, papers, documents, or other tangible items, the person to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

(b) The commission or the chair may respond to a motion to quash or modify a subpoena by taking an action described in Subsection (3).

(c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.

(7) Nothing in this section prevents the commission or the chair from seeking an extraordinary writ to remedy contempt of the commission.

(8) A party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.

(9) An individual is not in contempt of the commission if the person's disobedience or failure to comply with a provision of Subsection (1) is due to a valid invocation of the person's Fifth Amendment right against self-incrimination.

Enacted by Chapter 426, 2013 General Session

63A-14-706. Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.

(1) The chair shall ensure that each witness listed in a complaint and response is subpoenaed for appearance at the hearing unless:

- (a) the witness is unable to be properly identified or located; or
- (b) service is otherwise determined to be impracticable.

(2) The chair shall determine the scheduling and order of witnesses and presentation of evidence.

(3) The commission may, by majority vote:

- (a) overrule the chair's decision not to subpoena a witness under Subsection (1);
- (b) modify the chair's determination on the scheduling and order of witnesses, and the presentation of evidence, under Subsection (2);
- (c) decline to hear or call a witness who is requested by a complainant or a respondent;
- (d) decline to review or consider evidence submitted in relation to an ethics complaint; or
- (e) request and subpoena witnesses or evidence according to the procedures of Section 63A-14-704.

(4) (a) Each witness shall testify under oath.

(b) The chair or the chair's designee shall administer the oath to each witness.

(5) After the oath is administered to a witness, the chair shall direct testimony as follows:

(a) allow the party that called the witness, or that party's counsel, to question the witness;

(b) allow the opposing party, or the opposing party's counsel, to cross-examine the witness;

(c) allow additional questioning by a party or a party's counsel as appropriate;

(d) give commission members the opportunity to question the witness; and

(e) as appropriate, allow further examination of the witness by the commission, or the parties or their counsel.

(6) (a) If a witness, a party, or a party's counsel objects to a question, the chair shall:

(i) direct the witness to answer; or

(ii) rule that the witness is not required to answer the question.

(b) If a witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt in accordance with the provisions of Section 63A-14-705.

(7) (a) The chair or a majority of the members of the commission may direct a witness to furnish any relevant evidence for consideration if the witness brings the material voluntarily or was required to bring the material by subpoena.

(b) If a witness declines to provide evidence in response to a subpoena, the

witness may be held in contempt under Section 63A-14-705.

Enacted by Chapter 426, 2013 General Session

63A-14-707. Communications of commission members.

(1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.

(2) While a complaint is under review by the commission, a member of the commission may not initiate, engage in, or consider any communications concerning the complaint with a third party unless:

(a) the communication is expressly permitted under the procedures established by this chapter; or

(b) the communication is made by the third party, in writing, simultaneously to:

(i) all members of the commission; and

(ii) a staff member of the commission.

(3) While the commission is reviewing a complaint under this chapter, a commission member may communicate outside of the meetings or deliberations with another member of, or staff to, the commission, if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-708. Attorney fees and costs.

(1) A complainant:

(a) may, but is not required to, retain legal representation during the complaint review process; and

(b) is responsible for payment of the complainant's attorney fees and costs incurred.

(2) A respondent:

(a) may, but is not required to, retain legal representation during the complaint review process; and

(b) is responsible for payment of the respondent's attorney fees and costs incurred.

(3) An attorney who participates in a hearing before the commission shall comply with:

(a) the Rules of Professional Conduct established by the Utah Supreme Court;

(b) the procedures and requirements of this chapter; and

(c) the directions of the chair and the commission.

(4) A violation of Subsection (3) may constitute:

(a) contempt of the commission under Section 63A-14-705; or

(b) a violation of the Rules of Professional Conduct, subject to enforcement by the Utah State Bar.

Enacted by Chapter 426, 2013 General Session